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and

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This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 159

(T. D. 01–24)

RIN 1515–AC30

FOREIGN REPAIRS TO AMERICAN VESSELS; CORRECTION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulations (T.D. 01–24), which were published in the Federal Register on Monday, March 26, 2001. The regulations related to the requirements regarding the declaration, entry, assessment of duty and processing of petitions for relief from duty for vessels of the United States which undergo foreign shipyard operations.

EFFECTIVE DATE: April 25, 2001.

FOR FURTHER INFORMATION CONTACT: Russell A. Berger, Regulations Branch, (202–927–1605).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The final regulations regarding foreign repairs to American vessels were published as T. D. 01–24 in the Federal Register (66 FR 16392) on Monday, March 26, 2001. In particular, these final regulations set forth the requirements regarding the declaration, entry, assessment of duty and processing of petitions for relief from duty for vessels of the United States which undergo foreign shipyard operations. The final rule document contained an error which could prove to be misleading and is in need of clarification.

NEED FOR CORRECTION

Specifically, the final rule document amended the authority citation for part 159, Customs Regulations (19 CFR part 159), by moving specific authority citations for certain regulatory sections in the part to the

authority citation section set forth at the beginning of the part from parenthetical references set forth immediately following the text of the particular sections. However, it has come to Customs attention that these same changes relating to the authority citation for part 159 were previously made in an interim rule document that was published in the Federal Register (64 FR 56433) on October 20, 1999, as T. D. 99–75.

CORRECTION OF PUBLICATION

Accordingly, the publication on March 26, 2001, of the final regulations concerning foreign repairs to American vessels (T.D. 01–24) (FR Doc. 01–7325) is corrected as follows:

1. On page 16399, in the third column, under the heading, "PART 159—LIQUIDATION OF DUTIES", correct amendatory instruction number 1 to read: "The authority citation for part 159 continues to read as follows:"
2. On page 16400, in the first column, under the heading, "PART 159—LIQUIDATION OF DUTIES", remove amendatory instruction number 2.
3. On page 16400, in the first and second columns, again under the heading, "PART 159—LIQUIDATION OF DUTIES", renumber amendatory instruction numbers 3, 4 and 5 as amendatory instruction numbers 2, 3, and 4, respectively.

Dated: April 19, 2001.

HAROLD M. SINGER,
Chief,
Regulations Branch.

[Published in the Federal Register, April 24, 2001 (66 FR 20588)]

(T.D. 01–32)

CUSTOMS ACCREDITATION OF MARKAN LABORATORIES AS A COMMERCIAL LABORATORY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Accreditation of Markan Laboratories of New York, New York, as a Commercial Laboratory.

SUMMARY: Markan Laboratories of New York, New York has applied to U.S. Customs under Part 151.12 of the Customs Regulations for accreditation as a commercial laboratory to analyze sugar, sugar syrups and confectionery products under Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS). Customs has determined that this company meets all of the requirements for accreditation as a com-

mercial laboratory. Specifically, Markan Laboratories has been granted accreditation to perform the following tests methods only: (1) Polarization of Raw Sugar, ICUMSA GS 1/2/3–1; (2) Polarization of White Sugar, ICUMSA GS 2/3–1; (3) Sugar Moisture by Loss on Drying, ICUMSA GS 2/1/3–15; (4) The Determination of the Polarization of Raw Sugar Without Wet Lead Clarification, ICUMSA GS 1/2/3–2. Therefore, in accordance with Part 151.12 of the Customs Regulations, Markan Laboratories of New York, New York is hereby accredited to analyze the products named above.

LOCATION: Markan Laboratories accredited site is located at: 5 Hanover Square, 12th Floor, New York, New York, 10004–2614.

EFFECTIVE DATE: April 12, 2001

FOR FURTHER INFORMATION CONTACT: Michael Parker, National Quality Manager, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Suite 1500 North, Washington, D.C. 20229.

Dated: April 18, 2001.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, Aparil 23, 2001 (66 FR 20525)]

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19 CFR Part 10

(T.D. 01–33)

RIN 1515–AC85

AMENDMENT TO WOOL DUTY REFUND PROGRAM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis regarding the refund of duties paid on imports of certain wool products pursuant to section 505 of the Trade and Development Act of 2000. Principally, this document amends the final rule published in the Federal Register on December 26, 2000, regarding the description of the types of wool products that are eligible to provide the basis for a wool duty refund for claim year 2000. This interim rule is necessary to accurately reflect the scope of section 505. This document also

sets forth the tariff provisions that eligible wool products must be entered under in each of claim years 2000, 2001 and 2002 to substantiate a duty refund. These amendments reflect changes to the Harmonized Tariff Schedule by the Annex to Presidential Proclamation 7383. Other amendments involve non-substantive editorial changes and the correction of typographical errors. Due to the changes to the final rule, Customs is reopening the time period within which to file an original or amended letter of intent to file a wool duty refund claim.

DATES: This interim rule is effective April 23, 2001. Letters of intent to file a wool duty refund claim, whether original or amended, must be received by Customs no later than May 8, 2001. Comments must be received on or before June 22, 2001.

ADDRESS: Written comments (preferably in triplicate) should be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Chief, Entry and Drawback Management (202) 927–1082.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 ("the Act"), Public Law 106–200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

On December 26, 2000, Customs published in the Federal Register (65 FR 81344), as T.D. 01–01, the final rule setting forth the eligibility, documentation and procedural requirements regarding Customs issuance of refunds of the duties paid on imports of certain wool products. The final regulation was added to the Customs Regulations at § 10.184 (19 CFR 10.184), effective January 25, 2001.

Since the publication of T.D. 01–01, it has come to Customs attention that certain tariff subheadings identified in § 10.184 of the Customs Regulations (19 CFR 10.184) do not accurately reflect the scope of section 505 in regard to the wool products that may substantiate a duty refund for claim year 2000. This document amends these regulatory provisions so as to conform to the terms of the statute.

This document also amends § 10.184 to reflect the new tariff provisions for certain worsted wool fabrics and wool yarns added to the Harmonized Tariff Schedule of the United States (HTSUS) by the Annex to Presidential Proclamation 7383, published in the Federal Register on December 6, 2000 (65 FR 76551), effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after Janu-

ary 1, 2001. These new HTSUS tariff provisions affect the administration of the wool duty refund program in that they provide the basis for a wool duty refund for claim years 2001 and 2002, and replace certain HTSUS subheadings identified in the tariff provisions created in sections 501 and 502 that provide the basis for a wool duty refund for claim year 2000.

Additionally, this document corrects several typographical errors and makes non-substantive editorial changes to § 10.184.

The amendments, corrections and editorial changes are described below.

SCOPE OF SECTION 505 IN REGARD TO THE WOOL PRODUCTS THAT ARE ELIGIBLE TO PROVIDE THE BASIS FOR A WOOL DUTY REFUND

Section 505 provides that wool products "of the kind" described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 or 9902.51.14 are eligible to provide the basis for a wool duty refund for claim years 2000, 2001 and 2002. These 9902 subheadings were created in sections 501 and 502, and were added to the HTSUS on January 1, 2001.

In § 10.184, paragraphs (c), (d), (f) and (g) provide that certain wool products "of the kind" described in the chapter 51, HTSUS, tariff provisions cited in the 9902, HTSUS, subheadings created in sections 501 and 502, may be used to substantiate a wool duty refund for claim year 2000. For claim years 2001 and 2002, the current regulations correctly reference wool products "of the kind" described in the 9902, HTSUS, subheadings created in sections 501 and 502. For claim year 2000, however, the current regulations do not accurately reflect the scope of section 505 in that the chapter 51, HTSUS, tariff provisions referenced therein are broader than the 9902, HTSUS, subheadings because the latter are subject to additional statutory conditions. In this regard, it is noted that the heading texts to HTSUS provisions 5112.11.20 and 5112.19.90 do not contain the statutory condition that the wool fabrics must be "certified by the importer as suitable for use in making suits, suit-type jackets, or trousers," as is found in the heading texts to 9902.51.11 and 9902.51.12. Also, the heading texts to HTSUS provisions 5107.10.00 (wool yarn) and 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 and 5105.29 (wool fiber and top) do not contain limiting micron criteria, as do the heading texts to 9902.51.13 and 9902.51.14.

For this reason, paragraphs (c), (d), (f) and (g) in § 10.184 are amended to accurately reflect the scope of section 505 by providing that wool products of the kind described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 and 9902.51.14 provide the basis for a wool duty refund for claim years 2000, 2001 and 2002.

It should be noted that section 505 does not require that eligible wool products be entered under these 9902, HTSUS, subheadings. Customs is of the view that use of the statutory construction "of the kind" in section 505(a), (b) and (c) reflects Congress' intent to permit wool products entered under the chapter 51, HTSUS, subheadings identified in the

tariff provisions created in sections 501 and 502 to be used to substantiate a wool duty refund claim for all three claim years, so long as the products entered under these chapter 51 tariff provisions are "of the kind" described in the relevant 9902, HTSUS, subheadings set forth in section 505. The fact that the relevant 9902, HTSUS, subheadings were not in effect in the tariff schedule until January 1, 2001, supports the view that Congress could not have intended to require entry under these tariff provisions.

AMENDMENTS TO CONFORM § 10.184 TO SECTION 505

To reflect the scope of section 505 in regard to the types of wool products that are eligible to provide the basis for a wool duty refund claim, the following amendments are required to the regulatory text:

(1) Within § 10.184, paragraphs (c)(1), (c)(2) and (c)(3) are amended to reflect that for all three claim years section 505 authorizes limited refunds of the duties paid on entries of wool products of the kind described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 or 9902.51.14; and

(2) Within § 10.184, the following paragraphs are amended to reflect that the referenced wool products must be "of the kind" described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 or 9902.51.14: (d)(2)(i)(D)(*1*); (d)(2)(ii)(affidavit item 1); (d)(3)(i)(E)(*1*); (d)(3)(ii)(affidavit item 1); (f); (g)(3)(iii); (g)(3)(iii)(A); (g)(3)(iv)(affidavit item 1); and (g)(3)(vi)(affidavit item 1).

AMENDMENTS TO § 10.184 TO REFLECT ADDITIONS TO THE HTSUS EFFECTED BY THE ANNEX TO PRESIDENTIAL PROCLAMATION 7383

The Annex to Presidential Proclamation 7383 provides for the following HTSUS subheading substitutions, effective on or after January 1, 2001:

- 5112.11.20 is replaced by subheadings 5112.11.30 and 5112.11.60;
- 5112.19.90 is replaced by subheadings 5112.19.60 and 5112.19.95; and
- 5107.10.00 is replaced by subheading 5107.10.30.

Because of these substitutions, it is necessary to clarify which chapter 51, HTSUS, tariff provisions may provide the basis for a wool duty refund for each claim year. To that end, it is noted that the chapter 51, HTSUS, subheadings cited in the heading text to HTSUS subheading 9902.51.14 were not replaced by the Annex, and remain eligible to provide the basis for a wool duty refund for claim years 2000, 2001 and 2002. Those tariff provisions that were replaced in the HTSUS by the Annex are only eligible to provide the basis for a wool duty refund claim for claim year 2000. The new tariff provisions added to the HTSUS by the Annex that replace the chapter 51 subheadings identified in the heading texts to the chapter 99, HTSUS, tariff provisions created in sections 501 and 502 are eligible to provide the basis for a wool duty refund

claim for claim years 2001 and 2002. The 9902, HTSUS, subheadings identified in section 505 are eligible to provide the basis for a wool duty refund for claims years 2001 and 2002.

Accordingly, to reflect the language of Presidential Proclamation 7383, within § 10.184, paragraphs (f), (g)(3)(iii)(E) and (F), and (g)(3)(iv)(affidavit items 5(a) and 5(b)) are amended to reflect the additions to the HTSUS implemented by the proclamation and to specify the chapter 51 HTSUS subheadings that are eligible to substantiate a wool duty refund claim for each claim year.

CLARIFICATIONS TO § 10.184

To enhance the clarity of the final regulation, the following amendments are made to the regulatory text:

(1) Within § 10.184, paragraphs (c)(1), (c)(2) and (c)(3) are amended to include the tariff heading texts for the 9902 HTSUS subheadings cited in section 505;

(2) Within § 10.184, paragraphs (c)(1), (c)(2) and (c)(3) are amended to include the chapter 51, HTSUS, subheadings under which eligible wool products must be entered in calendar year 1999;

(3) Within § 10.184, paragraphs (c)(1), (c)(2) and (c)(3) are amended by adding the adjective "U.S." before the word "manufacturer" in the first sentence of each of these provisions;

(4) Within § 10.184, paragraph (c)(1) is amended by adding the term "imported or" before the word "purchased" at the end of the first sentence;

(5) Within § 10.184, paragraphs (c)(2) and (c)(3) are amended by adding the term "to the manufacturer" after the word "refunded" in the second sentence of each provision;

(6) Within § 10.184, the following paragraphs are amended to clarify under which HTSUS tariff provisions eligible wool products must be entered in specific calendar years for purposes of substantiating a wool duty refund claim: (d)(2); (d)(2)(i)(A); (d)(2)(i)(D)(2); (d)(2)(i)(D)(5); (d)(2)(ii)(affidavit item 2); (d)(2)(ii)(affidavit item 5(a)); (d)(2)(iii)(A); (d)(2)(iv)(affidavit item 1); (d)(3); (d)(3)(i)(A); (d)(3)(i)(E)(2); (d)(3)(ii)(affidavit item 2); and (d)(3)(ii)(affidavit item 5); (f); (g)(3)(iii)(E) and (F); (g)(3)(iv)(affidavit items 5(a) and 5(b));

(7) Within § 10.184, the following paragraphs are amended to clarify that the term "fabric" referenced therein is worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12 and, where appropriate, to clarify that such fabric may be entered under HTSUS subheadings 5112.11.20, 5112.19.90, 5112.11.30, 5112.11.60, 5112.19.60 or 5112.19.95 in specific calendar claim years: (f); (g)(3)(iii)(E) and (F); and (g)(3)(iv)(affidavit items 5(a) and 5(b));

(8) Within § 10.184, the following paragraphs are amended by removing the word "attests" and adding the word "certifies" in its place to clarify that the affidavit serves as the claimant's certification, for purposes of this section, that the subject worsted wool fabric has an average fiber diameter of a particular micron and that

the fabric is suitable for use in making men's or boys' suits, suit-type jackets, or trousers: (d)(2)(ii)(affidavit item 6); (d)(2)(iv)(affidavit item 5); (d)(3)(ii)(affidavit item 6); (g)(3)(ii)(affidavit item 7); (g)(3)(iv)(affidavit item 6); and (g)(3)(vi)(affidavit item 6);

(9) Within § 10.184, paragraph (d)(2)(iii)(C) is amended by inserting the word "such" before the word "fabric" in the tenth line of the paragraph to clarify that the referenced fabric is worsted wool fabric of the kind described in (d)(2)(iii)(A) as corrected. The same amendment is made to paragraph (d)(2)(iv)(affidavit item 3);

(10) Within § 10.184, the last sentence in paragraph (d)(4), and paragraphs (d)(4)(i), (ii) and (iii), require rewording to clarify and simplify the regulatory text describing the required content of a letter of intent where the manufacturer is both an importer and a purchaser of eligible worsted wool fabric;

(11) Within § 10.184, the following paragraphs are amended to clarify that the relevant time frame is not a specific claim year or the "current calendar year", but rather "the calendar year for which a duty refund is sought": (g)(3)(i)(A); (g)(3)(ii)(affidavit item 1); (g)(3)(iii)(A), (B), (E) and (F); (g)(3)(iv)(affidavit items 2, 5(a) and 5(b)); (g)(3)(v)(A) and (C); and (g)(3)(vi)(affidavit item 3);

(12) Within § 10.184, the following paragraphs are amended to clarify that the referenced eligible wool products need to have been imported in calendar year 1999, but the duties need not have been paid in calendar year 1999: (d)(2)(i)(D)(*5*); (d)(2)(ii)(affidavit items 5(a) and 5(b)); (d)(2)(iii)(C); (d)(2)(iv)(affidavit item 3); (d)(3)(i)(E)(*5*); (d)(3)(ii)(affidavit item 5); and (e); and

(13) As a result of the changes described in item (12) above, Customs is reopening the time to file a letter of intent and/or an amended letter of intent. Section 10.184(d)(6) is amended by changing the date that a manufacturer's letter of intent must be received by Customs from March 31, 2001, until May 8, 2001.

TYPOGRAPHICAL ERRORS AND NON-SUBSTANTIVE EDITORIAL CHANGES

Several typographical errors and editorial changes require the following corrections to the regulatory text:

(1) Within § 10.184, in paragraph (b), the third word "for" is removed and the word "of" is added in its place;

(2) Within § 10.184, the duplicative term "duty refund" at the end of paragraph (g)(3)(viii) is removed;

(3) Within § 10.184, in paragraphs (d)(2)(i)(D)(*1*) and (d)(3)(i)(E)(*1*), the word "fabric" is added after the word "wool";

(4) Within § 10.184, in paragraph (d)(2)(iii)(C), the word "duty" is removed and the word "duties" is added in its place;

(5) Within § 10.184, the following paragraphs are corrected by removing the word "is" and adding in its place the term "is/was": (d)(2)(iv)(affidavit item 1); (g)(3)(i)(A); (g)(3)(ii)(affidavit item 1); (g)(3)(iii)(A); (g)(3)(iv)(affidavit item 1); and (g)(3)(vi)(affidavit item 1);

(6) Within § 10.184, the following paragraphs are corrected to reflect the redesignations made in paragraph (f): (g)(3)(i)(A); (g)(3)(ii)(affidavit item 1); and (g)(3)(viii);

(7) Within § 10.184, paragraphs (d)(3)(i)(B) and (C) are corrected by removing the term "(d)(2)(i)(A)" and adding in its place "(d)(3)(i)(A)";

(8) Within § 10.184, paragraphs (d)(3)(i)(E)(*3*) and (*4*) are corrected by removing the term "(d)(3)(i)(D)(*2*)" and adding in its place "(d)(3)(i)(E)(*2*)"; and

(9) Within § 10.184, paragraph (e) is corrected by removing the term "(d)(5)" and adding in its place "(d)(6)".

Because of the number of changes to the final rule published in the Federal Register on December 26, 2000, § 10.184 is republished in its entirety in this document.

COMMENTS

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), §1.4 of the Treasury Department Regulations (31 CFR 1.4), and §103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

INAPPLICABILITY OF PRIOR PUBLIC NOTICE AND COMMENT PROCEDURES

Customs has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. These regulations serve to align the Customs Regulations to section 505 of Title V of the Trade and Development Act of 2000, which went into effect May 18, 2000. The regulatory amendments inform the public of a change to the eligibility, documentation and procedural requirements necessary to substantiate a wool duty refund for claim year 2000, whereby eligible wool products must be of the kind described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 or 9902.51.14. Manufacturers eligible to receive these refunds need to know the amended requirements for applying for refunds as soon as possible. For these same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), Customs finds that there is good cause for dispensing with a delayed effective date.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required for these interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

PAPERWORK REDUCTION ACT

The collection of information involved in this interim rule has already been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1515–0227. This rule does not propose any substantive change to the existing approved information collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

DRAFTING INFORMATION

The principal author of this document was Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade agreements.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, 19 CFR part 10 is amended as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 and the specific authority for § 10.184 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * * * *

Section 10.184 is also issued under Sec. 505, Pub. L. 106–200, 114 Stat. 251;

* * * * * * *

2. A new center heading is added entitled "Wool Duty Refunds" before § 10.184 of the Customs Regulations (19 CFR 10.184).

3. Section 10.184 is revised to read as follows:

§ 10.184 Refund of duties on certain wool imports.

(a) *General.* Section 505 of Title V of Pub. L. 106–200 (114 Stat. 251), entitled the Trade and Development Act of 2000, authorizes the President to refund duties paid on imports of eligible wool products. The statute permits eligible importing-manufacturers and, in certain circumstances, manufacturers who are not importers, to apply for a re-

fund of duties paid on imports of eligible wool products in each of three succeeding years. Claimants are eligible for a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001 and 2002, limited to an amount not to exceed one-third of the duties paid on such wool products imported in calendar year 1999. This section sets forth the legal requirements and procedures that apply for purposes of obtaining this duty refund.

(b) *Eligible wool products*. For purposes of this section, the term "eligible wool product" means an imported wool product described under a Harmonized Tariff Schedule of the United States subheading listed under paragraph (c) of this section, relevant to a manufacturer of the particular wool products specified in paragraph (c).

(c) *Refunds authorized by section 505*—(1) *Worsted wool fabric*. For each of calendar years 2000, 2001 and 2002, a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12, is eligible to claim a limited refund of the duties paid in such calendar years on entries of such fabrics that were imported or purchased by the manufacturer. HTSUS subheading 9902.51.11 provides for fabrics, of worsted wool, with average fiber diameters greater than 18.5 micron, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers. HTSUS subheading 9902.51.12 provides for fabrics, of worsted wool, with average fiber diameters of 18.5 micron or less, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers. The amount of duties eligible to be refunded to the manufacturer for each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid on calendar year 1999 imports of worsted wool fabric that was imported or purchased by the manufacturer and entered under HTSUS subheadings 5112.11.20 or 5112.19.90. A broker or other individual acting on behalf of the manufacturer is ineligible to claim a duty refund.

(2) *Wool yarn*. For each of calendar years 2000, 2001 and 2002, a U.S. manufacturer of worsted wool fabric, who imports wool yarn of the kind described in HTSUS subheading 9902.51.13, is eligible to claim a limited refund of the duties paid in each of these years on such imported wool yarn. HTSUS subheading 9902.51.13 provides for yarn, of combed wool, not put up for retail sale, containing 85 percent or more by weight of wool, formed with wool fibers having diameters of 18.5 micron or less. The amount of duties eligible to be refunded to the manufacturer for each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid by the importing-manufacturer on calendar year 1999 imports of wool yarn entered under HTSUS subheading 5107.10.00.

(3) *Wool fiber and wool top*. For each of calendar years 2000, 2001 and 2002, a U.S. manufacturer of wool yarn or wool fabric, who imports wool fiber or wool top of the kind described in HTSUS subheading

9902.51.14, is eligible to claim a limited refund of the duties paid in each of these years on such wool fiber or wool top. HTSUS subheading 9902.51.14 provides for wool fiber, waste, garnetted stock, combed wool, or wool top, having average fiber diameters of 18.5 micron or less. The amount of duties eligible to be refunded to the manufacturer for each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid by the importing-manufacturer on calendar year 1999 imports of wool fiber or wool top entered under HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 or 5105.29.

(d) *Manufacturer's letter of intent to file a claim for a wool duty refund.* A manufacturer that anticipates filing a wool duty refund claim in calendar years 2000, 2001, and 2002, pursuant to the terms of paragraph (c) of this section, must first file with Customs a letter of intent to that effect. A manufacturer's letter of intent must substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999.

(1) *Documentation required where the manufacturer is the importer.* Where a manufacturer is the importer of the eligible wool products imported in calendar year 1999, a letter of intent to file a wool duty refund claim must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer and must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful. The letter of intent must contain the following information:

(i) A statement of the total amount of duties paid by the importing-manufacturer on eligible wool products imported in calendar year 1999;

(ii) A list of relevant entry summary numbers, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount set forth in paragraph (d)(1)(i) of this section; and

(iii) A statement that no entry summary has been listed in paragraph (d)(1)(ii) of this section that did not liquidate under the HTSUS subheadings that provide a basis for a wool duty refund.

(2) *Documentation required where the manufacturer is not the importer, but the manufacturer possesses the relevant entry summary numbers.* Where a manufacturer described in paragraph (c)(1) of this section was not the calendar year 1999 importer of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90, but possesses the relevant entry summary numbers, a letter of intent to file a wool duty refund claim must be submitted to Customs and signed by the non-importing manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) The non-importing manufacturer's letter of intent must contain the following information:

(A) A statement as to the identity of the importer(s) or supplier(s) who sold worsted wool fabric that was imported in calendar year 1999, and entered under HTSUS subheadings 5112.11.20 or 5112.19.90, to the manufacturer;

(B) Copies of all relevant invoices, set forth as an attachment, that demonstrate that the manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified importer(s) or identified supplier(s) and that establish, where applicable, that the identified supplier(s) purchased such fabric from the identified importer(s);

(C) A completed Customs Form (CF) 5106—Importer ID Input Record, set forth as an attachment; and

(D) A signed affidavit, set forth as an attachment, that contains the following information:

(*1*) A statement that the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

(*2*) A statement that the affiant was not the importer in calendar year 1999 of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

(*3*) A statement as to the quantity of imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(D)(*2*) of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of relevant invoices attached;

(*4*) If the affiant purchased fabric of the kind described in paragraph (d)(2)(i)(D)(*2*) of this section from an identified supplier, a statement that the affiant has been provided with substantiating documentation that establishes that the subject fabric was imported by the identified importer; and

(*5*) A statement by the affiant that the identified importer(s) has provided a list of relevant entry summary numbers directly to the affiant that substantiates the amount of duties paid on calendar year 1999 imports of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90, as identified in the submitted invoices, and such information is set forth as an attachment; and/or

(*6*) A statement by the affiant that the identified importer has agreed to submit a signed affidavit directly to Customs with the relevant entry summary numbers attached.

(ii) A non-importing manufacturer's affidavit to substantiate the amount of duties paid on worsted wool fabric imported in calendar year 1999 must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer, and be submitted to Customs in the following format:

NON-IMPORTING MANUFACTURER'S AFFIDAVIT IN SUPPORT OF A LETTER OF INTENT TO FILE A WOOL DUTY REFUND CLAIM (WHERE THE MANUFACTURER POSSESSES THE RELEVANT ENTRY SUMMARY NUMBERS FOR THE FABRIC IDENTIFIED IN THE INVOICES SUBMITTED WITH THIS AFFIDAVIT)

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

2. The undersigned was not the importer in calendar year 1999 of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (2) above from (*name of importer*) or from a supplier (*name of supplier*), and copies of the relevant invoices are attached;

4. Where the undersigned purchased imported worsted wool fabric of the kind described in item (2) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5(a). Attached is a list of relevant entry summary numbers, provided directly to the undersigned by (*name of importer*), that substantiates the amount of duties paid on calendar year 1999 imports of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90, as identified in the attached invoices; and/or

5(b). The importer, (*name of importer*), has agreed to submit a signed affidavit directly to Customs that attests to the fact that the importer sold imported worsted wool fabric of the kind described in item (2) above to the undersigned or to identified supplier(s), and to attach a list of the relevant entry summary numbers that substantiates the amount of duties paid on calendar year 1999 imports of such worsted wool fabric, as identified in the attached invoices; and

6. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(iii) If an importer assists in the substantiation of a non-importing manufacturer's letter of intent by submitting relevant entry summary numbers directly to Customs as an attachment to a signed affidavit, the importer's affidavit must be signed by the importer or a knowledgeable officer or employee of the importer and must state that, to the best of the affiant's knowledge and belief, the information contained in the affidavit is accurate and truthful. The importer's signed affidavit must contain the following information:

(A) A statement that the affiant paid duties on calendar year 1999 imports of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

(B) Identification of the claimant, or supplier to the claimant, to whom the affiant sold imported worsted wool fabric of the kind described in paragraph (d)(2)(iii)(A) of this section;

(C) A list of relevant entry summary numbers for worsted wool fabric of the kind described in paragraph (d)(2)(iii)(A) of this section, imported in calendar year 1999, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount of duties paid on such fabric sold to the identified claimant or identified supplier, as evidenced by the claimant's invoices; and

(D) A statement that the importer has not listed any entry summary in paragraph (d)(2)(iii)(C) of this section that did not liquidate under HTSUS subheadings 5112.11.20 or 5112.19.90.

(iv) The importer's affidavit in support of a non-importing manufacturer's letter of intent to claim a wool duty refund must be signed by the importer or a knowledgeable officer or employee of the importer, and be submitted to Customs in the following format:

IMPORTER'S AFFIDAVIT IN SUPPORT OF A NON-IMPORTING MANUFACTURER'S LETTER OF INTENT TO CLAIM A WOOL DUTY REFUND

1. The undersigned, (*name of importer*), is/was an importer who paid duties on calendar year 1999 imports of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

2. The undersigned sold worsted wool fabric of the kind described in item (1) above to a manufacturer identified as (*name of manufacturer*) or to a supplier(s) identified as (*name of supplier*);

3. Attached is a list of relevant entry summary numbers for worsted wool fabric of the kind described in item (1) above that substantiates the amount of duties paid on calendar year 1999 imports of such fabric that was sold to (*name of manufacturer*) or to (*name of supplier*) by the undersigned;

4. The undersigned has not listed any entry summary in item (3) above that did not liquidate under HTSUS subheadings 5112.11.20 or 5112.11.90; and

5. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(3) *Documentation required where the manufacturer is not the importer and the manufacturer does not possess the relevant entry summary numbers.* Where a manufacturer described in paragraph (c)(1) of this section was not the calendar year 1999 importer of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90, and does not possess the relevant entry summary numbers, a letter of intent to file a wool duty refund claim must be submitted to Customs and signed by the non-importing manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) The non-importing manufacturer's letter of intent, where the manufacturer does not possess the relevant entry summary numbers, must contain the following information:

(A) A statement as to the identity of the importer(s) or supplier(s) who sold imported worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90 to the non-importing manufacturer;

(B) Copies of all relevant calendar year 1999 invoices, set forth as an attachment, that demonstrate that the non-importing manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(A) of this section from an identified importer(s) or identified supplier(s);

(C) A statement that if the non-importing manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(A) of this section from an identified supplier, the manufacturer has substantiating documentation that establishes that such fabric was imported by the identified importer;

(D) A completed Customs Form (CF) 5106—Importer ID Input Record, set forth as an attachment; and

(E) A signed affidavit, set forth as an attachment, that contains the following information:

(*1*) A statement that the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

(*2*) A statement that the affiant was not the importer in calendar year 1999 of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

(*3*) A statement of the quantity of imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(E)(*2*) of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of the relevant invoices attached;

(*4*) A statement that where the affiant purchased imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(E)(*2*) of this section from an identified supplier, the affiant has substantiating documentation that establishes that such fabric was imported by the identified importer; and

(*5*) A statement by the affiant that a good faith effort was made to contact the identified importer and request relevant entry summary numbers that substantiate the amount of duties paid on calendar year 1999 imports of worsted wool fabric identified in the submitted invoices, but the identified importer is unable or unwilling to provide such assistance.

(ii) A non-importing manufacturer's affidavit to estimate and substantiate the amount of duties paid by the importer on worsted wool fabric imported in calendar year 1999, where no entry summary numbers are available, must be signed by the manufacturer or a knowledge-

able authorized officer or employee of the manufacturer, and be submitted to Customs in the following format:

NON-IMPORTING MANUFACTURER'S AFFIDAVIT IN SUPPORT OF A LETTER OF INTENT TO FILE A WOOL DUTY REFUND CLAIM (WHERE THE MANUFACTURER DOES NOT POSSESS THE RELEVANT ENTRY SUMMARY NUMBERS FOR THE FABRIC IDENTIFIED IN THE INVOICES SUBMITTED WITH THIS AFFIDAVIT)

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

2. The undersigned was not the importer in calendar year 1999 of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (2) above from (*name of importer*) or from a supplier (*name of supplier*), and copies of relevant invoices are attached;

4. If the undersigned has purchased imported worsted wool fabric of the kind described in item (2) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5. The undersigned attests that a good faith effort was made to contact the identified importer(s) and request that relevant entry summary numbers be provided to either the undersigned or directly to Customs that substantiate the amount of duties paid on calendar year 1999 imports of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90, as identified in the submitted invoices, but the identified importer is unable or unwilling to provide such assistance; and

6. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(4) *Documentation required where the manufacturer is both an importer and a purchaser of eligible worsted wool fabric.* Where a manufacturer described in paragraph (c)(1) of this section is both an importer and a purchaser of eligible worsted wool fabric, the manufacturer must submit to Customs a letter of intent to file a wool duty refund claim that is signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful, and must contain the following:

(i) Where the manufacturer is the importer, the information described in paragraph (d)(1) of this section;

(ii) Where the manufacturer is not the importer, but the manufacturer possesses the relevant entry summary numbers, the information described in paragraph (d)(2) of this section and the relevant entry summary numbers may be submitted directly to Customs by the manufacturer and/or the importer(s); and/or

(iii) Where the manufacturer is not the importer, and the manufacturer does not possess the relevant entry summary numbers, the information described in paragraph (d)(3) of this section.

(5) *Documentation required where a prospective claimant is the legal assignee of an eligible manufacturer's potential wool duty refund rights.* To file a letter of intent where the prospective claimant is the legal assignee of any potential wool duty refund claim rights attributable to an eligible manufacturer described in paragraph (c) of this section, the facts of such legal assignation, and the identity of all affected parties, must be submitted to Customs in a written attachment to the letter of intent, and additional substantiating documentation must be available to Custom upon request. Only those assignees that substantiate, to Customs satisfaction, the terms and legality of the assignation will be eligible to claim a wool duty refund.

(6) *Time to file a letter of intent.* A manufacturer's letter of intent to file a wool duty refund claim, including amendments, all attachments and, where applicable, the importer's signed affidavit in support of the manufacturer's letter of intent, must be received by Customs no later than May 8, 2001, unless this date is extended upon due notice in the Federal Register.

(7) *Place to file a letter of intent.* A manufacturer's letter of intent to file a wool duty refund claim, including all attachments and, where applicable, the importer's signed affidavit in support of the manufacturer's letter of intent, must be submitted to: U.S. Customs Service, Wool Refund Claim, Residual Liquidation and Protest Branch, Rm. 761, 6 World Trade Center, New York, N.Y. 10048–0945.

(e) *Customs verification letter.* Customs will issue to a prospective claimant a written verification letter within 30 calendar days from the date Customs receives a timely and complete letter of intent that relies solely on relevant entry summary numbers to substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999. Where a prospective claimant submits a letter of intent that relies on invoices, in whole or in part, to substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999, Customs will issue a verification letter to such prospective claimant within 30 calendar days after the date all letters of intent must be received by Customs, as set forth in paragraph (d)(6) of this section. The amount of potential duty refund will be based on the quantity of eligible wool products that was imported by the prospective claimant or, where the prospective claimant was not the importer, purchased by the prospective claimant (as indicated by submitted invoices). If entry summary numbers are used to substantiate the amount of duties paid on eligible wool products imported in calendar year 1999, the potential refund amount will be limited to the amount of duties paid on such entry summaries that is attributable to that quantity of eligible wool products. If, instead, invoices are used to estimate and substantiate the amount of duties paid

on eligible wool fabrics imported in calendar year 1999, the amount of duties will be determined by deducting 10 percent from the invoice amounts (to deduct imputed profits and costs), dividing the resulting adjusted invoice amounts by 130.6% to back out the duty, and then multiplying that amount times the duty rate (30.6%). If the aggregate amount of duties attributable to an importer exceeds the amount of duties paid by that importer in calendar year 1999, as indicated by ACS, an adjustment will be made to those claimants requiring use of the invoice formula. The percentage deducted from the invoice amounts for those claimants will be increased on a *pro rata* basis to ensure that the aggregate amount to be refunded does not exceed the ACS amount. Refund amounts substantiated by entry summary numbers will not be reduced. A letter of verification will set forth the following information:

(1) The prospective claimant's claim identification number;

(2) The maximum amount of wool duty refund that the individual prospective claimant will be eligible to receive in each of calendar years 2000, 2001, and 2002; and

(3) Where invoices are used to substantiate the amount of duties paid on worsted wool fabric in calendar year 1999, the percentage that was deducted from the invoice amounts, with accompanying explanation.

(f) *Eligibility criteria to claim a wool duty refund for calendar years 2000, 2001, and 2002.* To be eligible to claim a refund of duties paid on imports of certain wool products in calendar years 2000, 2001, and 2002, a claimant must be in receipt of a claim verification letter from Customs. Additionally, in each calendar year for which a wool duty refund claim is being made, a claimant must be:

(1) A U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12, for which duties were paid on entries made under HTSUS subheadings 5112.11.20 or 5112.19.90 in calendar year 2000, or under HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60, 5112.19.95, 9902.51.11 or 9902.51.12 in calendar years 2001 and 2002;

(2) A U.S. manufacturer of worsted wool fabric who paid duties on imported wool yarn of the kind described in HTSUS subheading 9902.51.13 and entered under HTSUS subheadings 5107.10.00 in calendar year 2000, or under HTSUS subheadings 5107.10.30 or 9902.51.13 in calendar years 2001 and 2002;

(3) A U.S. manufacturer of wool yarn or wool fabric who paid duties on imported wool fiber or wool top of the kind described in HTSUS subheading 9902.51.14 and entered under HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 or 5105.29 in calendar years 2000, 2001 and 2002, or under HTSUS subheading 9902.51.14 in calendar years 2001 and 2002; and/or

(4) A legal assignee of the existing wool duty refund claim rights of an eligible manufacturer described in paragraphs (f)(1), (f)(2) or (f)(3) of this section.

(g) *Procedures for filing a claim*—(1) *Time to file.* An eligible claimant may file with Customs one wool duty refund claim for each of calendar claim years 2000, 2001 and 2002, including, where applicable, related amended claims. A claim may be amended within 90 calendar days from the date of the original submission or, if Customs has notified the claimant in writing that the claim is insufficient to support the claim as requested or is otherwise defective (*e.g.*, a claim that relies on an entry summary that is ineligible for a wool duty refund, as provided for in § 10.184(j)), within 90 calendar days from the date of the Customs notification. All claims for a wool duty refund, whether original or amended in the absence of a Customs notification of insufficiency or defect, must be received by Customs no later than December 31 of the year following the calendar claim year for which a wool duty refund is being sought. An amended claim made in response to a Customs notification of insufficiency or defect may be submitted to Customs after the December 31 deadline applicable to all other claim submissions. A claimant may file two separate duty refund claims in a single calendar year, so long as the claims are for two different claim years.

(2) *Place to file.* A claim for a refund of duties paid on imports of eligible wool products must be submitted to: U.S. Customs Service, Wool Refund Claim, Residual Liquidation and Protest Branch, Rm. 761, 6 World Trade Center, New York, N.Y. 10048–0945.

(3) *Documentation.* (i) *Where the manufacturer is the importer.* To file a wool duty refund claim, an importing-manufacturer must provide Customs with a copy of the verification letter the claimant received from Customs and an affidavit, signed by the manufacturer or a knowledgeable officer or employee of the manufacturer, that contains the following information:

(A) A statement that the affiant is/was a U.S. manufacturer of the kind described in paragraphs (f)(1), (f)(2) or (f)(3) of this section, in the calendar claim year for which a wool duty refund is being sought;

(B) A statement of the total amount of duties paid by the affiant in that year on eligible wool products;

(C) The total amount of duty refund being claimed;

(D) A list of relevant entry summary numbers, set forth as an attachment and submitted to Customs in either a paper or an electronic format (the latter on diskette), that substantiates the amount of duties for which a refund is being claimed in paragraph (g)(3)(i)(C) of this section, and does not exceed the affiant's share of duties eligible to be refunded as set forth in the attached verification letter;

(E) A statement that no entry summary has been listed in paragraph (g)(3)(i)(D) of this section that has already had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(F) A statement that identifies, if applicable, any entry summary listed in paragraph (g)(3)(i)(D) of this section that is, or may become,

subject to an outstanding drawback claim, protest, or any other refund claim authorized by law.

(ii) *Form of affidavit.* An importing-manufacturer's signed affidavit to substantiate a wool duty refund claim in calendar years 2000, 2001, or 2002 must be signed by the manufacturer, or a knowledgeable officer or employee of the manufacturer, and submitted to Customs in the following format:

IMPORTING-MANUFACTURER'S AFFIDAVIT IN SUPPORT OF A CLAIM FOR A WOOL DUTY REFUND UNDER SECTION 505 OF THE TRADE AND DEVELOPMENT ACT OF 2000, FOR CALENDAR YEAR

1. The undersigned, (*name of manufacturer*), is/was a U.S. manufacturer of the kind described in paragraphs (f)(1) [__], (f)(2) [__] or (f)(3) [__] [check one] of § 10.184 of the Customs Regulations (19 CFR 10.184(f)), in the calendar claim year for which a wool duty refund is being sought;

2. The undersigned paid (*total amount of duties paid*) in calendar year _____ on eligible wool products;

3. The amount of wool duty refund being claimed is $_____;

4. Attached is a list of the relevant current claim year entry summary numbers that substantiate the amount of duty refund being claimed in item (3) above;

5. The undersigned has not listed any entry summary in item (4) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law;

6. The undersigned will list any entry summary in item (4) above that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law; and

7. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(iii) *Where the manufacturer is not the importer.* To file a wool duty refund claim, a manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HSTUS subheadings 9902.51.11 or 9902.51.12, who is a purchaser but not the importer of such fabric, must provide Customs with a copy of the verification letter the claimant received from Customs and an affidavit signed by the manufacturer, or a knowledgeable officer or employee of the manufacturer, that contains the following information:

(A) A statement that the affiant is/was a U.S. manufacturer in the calendar claim year for which a wool duty refund is being sought, of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

(B) A statement that the affiant was not the importer in the calendar claim year for which a wool duty refund is being sought of imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) of this section;

(C) A statement as to the quantity of imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of relevant invoices attached;

(D) A statement that where the affiant purchased imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) of this section from an identified supplier(s), the affiant has substantiating documentation that establishes that such fabric was imported by the identified importer(s); and

(E) A statement by the affiant that the identified importer(s) has provided a list of relevant entry summary numbers directly to the affiant that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought on imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) of this section, as identified in the submitted invoices, and entered under HTSUS subheadings 5112.11.20 or 5112.19.90 in calendar year 2000, or under HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60, 5112.19.95, 9902.51.11 or 9902.51.12 in calendar years 2001 and 2002, and such information is set forth as an attachment; and/or

(F) A statement by the affiant that the identified importer(s) has agreed to submit a signed affidavit directly to Customs with the relevant entry summary numbers attached that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought on imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) of this section, as identified in the submitted invoices, and entered under HTSUS subheadings 5112.11.20 or 5112.19.90 in calendar year 2000, or under HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60, 5112.19.95, 9902.51.11 or 9902.51.12 in calendar years 2001 and 2002.

(iv) *Form of affidavit.* A manufacturer who is not the importer of the imported worsted wool fabric must submit to Customs an affidavit to substantiate a wool duty refund claim in calendar years 2000, 2001, or 2002, signed by the manufacturer or a knowledgeable officer or employee of the manufacturer, in the following format:

NON-IMPORTING MANUFACTURER'S AFFIDAVIT IN SUPPORT OF A CLAIM FOR A DUTY REFUND UNDER SECTION 505 OF THE TRADE AND DEVELOPMENT ACT OF 2000, FOR CALENDAR YEAR

1. The undersigned, (*name of manufacturer*), is/was a U.S. manufacturer in calendar year _____ of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

2. The undersigned was not the importer in the calendar claim year for which a wool duty refund is being sought of worsted wool fabric of the kind described in item 1 above;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (1) above from (*name of importer(s)*) or from a supplier(s), and the relevant invoices are attached;

4. Where the undersigned purchased imported worsted wool fabric of the kind described in item (1) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5(a). Attached is a list of relevant entry summary numbers, provided directly to the undersigned by (*name of importer*), that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought, as evidenced by the attached invoices, on imported worsted wool fabric of the kind described in item (1) above and entered under HTSUS subheadings 5112.11.20 or 5112.19.90 in calendar year 2000, or under HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60, 5112.19.95, 9902.51.11 or 9902.51.12 in calendar years 2001 and 2002; and/or

5(b). The importer, (*name of importer*), has agreed to submit a signed affidavit directly to Customs that attests to the fact that the importer sold imported worsted wool fabric of the kind described in item (1) above to the undersigned or to (*name of supplier*), and has agreed to attach a list of relevant entry summary numbers that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought, as evidenced by the attached invoices, on such fabric that was entered under HTSUS subheadings 5112.11.20 or 5112.19.90 in calendar year 2000, or under HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60, 5112.19.95, 9902.51.11 or 9902.51.12 in calendar years 2001 and 2002; and

6. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(v) *Required content of an importer's signed affidavit in support of a manufacturer's wool duty refund claim.* Where an importer chooses to assist in the substantiation of a non-importing manufacturer's wool duty refund claim by submitting relevant entry summary numbers directly to Customs, such entry information must be set forth as an attachment to an affidavit that is signed by the importer or by a knowledgeable officer or employee of the importer, and must contain the following information:

(A) A statement as to the total amount of duties that the importer paid in the calendar year for which a wool duty refund is being sought on worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section;

(B) A statement that the importer sold worsted wool fabric of the kind described paragraph (g)(3)(iii) of this section, to the identified manufacturer or to the identified supplier(s);

(C) A list of relevant entry summary numbers for worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being

sought on such fabric that was sold by the importer to the identified manufacturer or to the identified supplier(s);

(D) A statement that no entry summary number has been listed in paragraph (g)(3)(v)(C) of this section that has already had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(E) A statement that lists any entry summary number in paragraph (g)(3)(v)(C) of this section that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law.

(vi) *Form of affidavit.* The importer's affidavit in support of manufacturer's wool duty refund claim must be signed by the importer or by a knowledgeable officer or employee of the importer, and be submitted to Customs in the following format:

IMPORTER'S AFFIDAVIT IN SUPPORT OF A NON-IMPORTING MANUFACTURER'S CLAIM FOR A DUTY REFUND UNDER SECTION 505 OF THE TRADE AND DEVELOPMENT ACT OF 2000, FOR CALENDAR YEAR

1. The undersigned, (*name of importer*), is/was an importer who paid duties in calendar year _____ on imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

2. The undersigned sold worsted wool fabric of the kind described in item (1) above to a manufacturer identified as (*name of manufacturer*) or to a supplier(s) identified as (*name of supplier*);

3. Attached is a list of relevant entry summary numbers for worsted wool fabric of the kind described in item (1) above, that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought on such fabric that was sold by the undersigned to (*name of manufacturer*) or to an identified supplier(s) (*name of supplier(s)*);

4. The undersigned has not listed any entry summary in item (3) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law;

5. The undersigned will list any entry summary in item (3) above that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law; and

6. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(vii) *Documentation required where the manufacturer is both an importer and a purchaser of eligible worsted wool fabric.* Where a manufacturer described in paragraph (c)(1) of this section is both an importer and a purchaser of eligible worsted wool fabric, the manufacturer must provide Customs with both the documentation described in paragraphs (g)(3)(i) and (g)(3)(ii) of this section, and the documentation described in paragraphs (g)(3)(iii) and (g)(3)(iv) of this section.

(viii) *Documentation required where the claimant is the legal assignee of an eligible manufacturer's wool duty refund claim rights.* To file a

wool duty refund claim where the claimant is the legal assignee of the existing wool duty refund claim rights of an eligible manufacturer described in paragraphs (f)(1), (f)(2) or (f)(3) of this section, the facts of such legal assignation, and the identity of all affected parties, must be submitted to Customs in a written attachment to the claim, and additional substantiating documentation must be available to Custom upon request. Only those assignees that substantiate, to Customs satisfaction, the terms and legality of the assignation will be eligible to claim a wool duty refund.

(h) *Wool duty refund claim processing procedures.* Upon receipt of a timely and complete wool duty refund claim filed pursuant to the terms of this section, Customs will determine the liquidation status of the entry summaries used to substantiate the claim. No duty refund will be issued to a claimant until all the entry summaries identified for purposes of substantiating the claim have been finally liquidated and the applicable amendment period, as set forth in paragraph (g)(1) of this section has expired or the claimant has submitted to Customs a signed waiver of amendment.

(i) *Denial of a wool duty refund claim.* Customs may deny a wool duty refund claim if the claim was not timely filed, if the claimant is not eligible pursuant to the terms of this section, or if the claimant has not complied with the requirements of this section. Customs will provide the claimant with written notice of the denial of the claim, including the reason for the denial.

(j) *Multiple refund claims and pending judicial review*—(1) *Allowance or denial of subsequent claims.* If an entry has been used to provide the basis for a duty refund claim pursuant to this section, and the entire amount of duties paid on that entry was refunded to the claimant, a claim for drawback, or any other refund claim authorized by law, that is based on that entry, will be denied by Customs. If an entry has been used to substantiate a claim for a duty refund under this section, and an amount in duties paid on that entry has not been refunded, the remaining amount may be eligible for subsequent duty refund claims under this section, drawback, or any other refund claim authorized by law. An entry that has already had 99% or more of the duties paid on that entry refunded by way of a drawback claim, protest, or any other claim authorized by law, may not be used to provide the basis for a wool duty refund claim.

(2) *Substitution of entry summary numbers.* If a duty refund claim under this section has not yet been processed by Customs, an importer may substitute an entry summary that has already been identified to Customs for purposes of substantiating the claim with another comparable entry summary, so long as the amount of duty paid in connection with the replacement entry is not less than the duty paid on the entry that was identified to Customs originally.

(3) *Pending judicial review.* If a summons involving the tariff classification or the dutiability of an imported wool product has been filed in

the Court of International Trade, Customs will deem any entry summary at issue in that judicial proceeding ineligible to substantiate a duty refund claim.

(k) *Penalties and liquidated damages.* A wool duty refund claimant's failure to comply with any of the procedural requirements set forth in this document, or failure to adhere to all applicable laws and regulations, may subject the claimant to penalties, liquidated damages or other administrative sanctions.

CHARLES W. WINWOOD,
Acting Commissioner of Customs.

Approved: April 9, 2001.
TIMOTHY E. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, April 23, 2001 (66 FR 20392)]

U.S. Customs Service

General Notices

QUARTERLY IRS INTEREST RATES USED IN CALCULATING INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON CUSTOMS DUTIES

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the quarter beginning April 1, 2001, the interest rates for overpayments will be 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will be 8 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the Federal Register on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the short-term Federal rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2001–16 (*see*, 2001–13 IRB 936, dated March 26, 2001), the IRS determined the rates of interest for the third quarter of fiscal year (FY) 2001 (the period of April 1–June 30, 2001). The interest rate paid to the Treasury for underpayments will be the short-term Federal rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change the fourth quarter of FY–2001 (the period of July 1–September 30, 2001).

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning Date	*Ending Date*	*Underpayments (percent)*	*Overpayments (percent)*	*Corporate Overpayments (Eff. 1–1–99) (percent)*
Prior to 070174	063075	6 %	6 %	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	
010183	063083	16 %	16 %	
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8 %	7 %	

Beginning Date	*Ending Date*	*Underpayments (percent)*	*Overpayments (percent)*	*Corporate Overpayments (Eff. 1–1–99) (percent)*
010199	033199	7 %	7 %	6 %
040199	033100	8 %	8 %	7 %
040100	033101	9 %	9 %	8 %
040101	063001	8 %	8 %	7 %

Dated: April 13, 2001.

CHARLES W. WINWOOD,
Acting Commissioner of Customs.

[Published in the Federal Register April 19, 2001 (66 FR 20173)]

VESSEL REPAIR AND PENALTIES PUBLIC MEETING

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This document announces that Customs will hold a public meeting to discuss the final rule amending the Customs Regulations concerning vessel repair. Certain vessel-related penalty matters will also be discussed at the meeting. This notice invites interested members of the public to attend.

DATES: The meeting will be held on Thursday May 10, 2001, from 9:00 a.m. until 12:00 p.m. Seating requests should be made no later than close of business, Monday April 30, 2001.

ADDRESS: The meeting will be held in New Orleans, Louisiana, at the historic Customhouse located at 423 Canal Street, room number 246.

FOR FURTHER INFORMATION CONTACT: Glenn Seale, Chief of the Vessel Repair Unit, Port of New Orleans, at (504) 670–2137 or, to reserve seating, via e-mail at *Glenn.Seale@Customs.Treas.gov*.

SUPPLEMENTARY INFORMATION: The final rule amending the Customs Regulations by which Customs administers the vessel repair statute (19 U.S.C. 1466) was published in the Federal Register on March 26, 2001 (66 FR 16392). The amendments, which appear at § 4.14 of the Customs Regulations (19 CFR 4.14), go into effect on April 25, 2001, with respect to American vessels arriving in the United States directly from foreign ports.

Customs has determined that it is appropriate to hold a public meeting in order to discuss the changes resulting from the amendments to the vessel repair regulations. Additionally, the meeting will provide a fo-

rum for the discussion of vessel-related penalties. Representatives from Customs Headquarters Office of Regulations and Rulings, as well as knowledgeable personnel from the Port of New Orleans, will preside over the meeting.

To ensure adequate seating, it is requested that interested persons submit notice of intent to attend the meeting via e-mail to *Glenn.Seale@Customs.Treas.gov* by close of business, Monday April 30, 2001. The notice should provide the company name, the name and title of the attendee(s), and a named point of contact, including telephone number and e-mail address, in the event Customs needs to notify an attendee of any changes to the program.

Dated: April 10, 2001.

LARRY L. BURTON,
Chief,
Entry Procedures and Carriers Branch.

[Published in the Federal Register April 17, 2001 (66 FR 19720)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 11, 2001

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
(for Stuart P. Seidel, Assistant Commissioner,
Office of Regulations and Rulings.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A DECORATIVE GLASS GARDEN ORNAMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of a decorative glass garden ornament.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of a decorative glass garden ornament, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on February 28, 2001, in Vol. 35, No. 9 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927–2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke New York Ruling Letter (NY) D81179, dated August 18, 1998, was published on February 28, 2001, in Vol. 35, No. 9 of the CUSTOMS BULLETIN. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices. As stated in the proposed notice, this revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY D81179, and any other ruling not specifically identified, to reflect the proper

classification of the merchandise pursuant to the analysis set forth in HQ 964629 (*see* the Attachment to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: April 4, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 4, 2001.
CLA–2 RR:CR:GC 964629 AML
Category: Classification
Tariff No. 7013.99.00

MS. LISA CHASTAIN
FRITZ COMPANIES, INC.
3930 W. 29th Street S Ste #5
Wichita, KS 67217

Re: Decorative glass garden ornament; NY D81179 reconsidered.

DEAR MS. CHASTAIN:

This is in reference to New York Ruling Letter (NY) D81179, issued to you on behalf of Decorator and Craft on August 18, 1998, which classified a decorative glass garden ornament under subheading 7020.00.60 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of glass: other. We have reconsidered NY D81179 and now believe that the classification set forth is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on February 28, 2001, in Vol. 35, No. 9 of the CUSTOMS BULLETIN, proposing to revoke NY D81179 and to revoke the treatment pertaining to the decorative glass garden ornament. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices.

Facts:

The article was described in NY D81179 as follows:

> The subject article, which is identified as "gazing ball", is a ten inch hollow glass ball with an extending open neck. The item has a reflective (mirror-like) appearance and will be used as an outdoor lawn decoration. You indicated in your letter that this item can not stand on its own. You further stated that this product will be marketed in the United States with a twenty four to thirty six inch high pedestal base.

NY D81179 classified the glass "gazing ball" under subheading 7020.00.60, HTSUS, which provides for other articles of glass: other.

Issue:

Whether the decorative glass garden ornaments are classifiable under subheading 7013.99.00, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet,

office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other; or under subheading 7020.00.60, HTSUS, which provides for other articles of glass: other?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Other glassware (con.):
7013.99	Other.
* * * * * * *	
7020.00	Other articles of glass:
7020.00.60	Other.

There is no question that the articles are classifiable in Chapter 70, HTSUS, which provides for articles of glass (we note that *in Los Angeles Tile Jobbers, Inc. v. United States*, 63 Cust. Ct. 248, C.D. 3904 (1969), the Court stated that "all articles of glass are generally defined as 'glassware'." (63 Cust. Ct. at 250; citing Webster's Third New International Dictionary (1968); see also Webster's New World Dictionary, Third College Edition, at 573 (1988), defining "glassware" as "articles made of glass"). To be determined is which subheading within Chapter 70 best provides for the articles.

Subheading 7020.00.60, HTSUS, is a so-called "basket" provision within Chapter 70, in which classification "is appropriate only when there is no tariff category that covers the merchandise more specifically." (*Apex Universal, Inc., v. United States*, CIT Slip Op. 98–69 (May 21, 1988)). Therefore, we are first addressing the other competing provisions within Chapter 70. Only if classification in those provisions is precluded will we address classification in heading 7020, HTSUS.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The "gazing balls," products of the blow mold process, have no functional use other than as a decoration for a lawn or garden. That is, the articles fulfill their function simply because they are *in esse*: by being. All of the articles bear a "neck" that we assume is a product of the blow molding process and which you allege facilitates the articles to "connect" to or be otherwise placed on a stand or stake. (We note that the neck could also be utilized to place or embed the articles in the ground or a garden.) Although one could prefer that the gazing ball be displayed from a stake or stand, it is reasonable to assume that one could place (arrange or embed) the article on the ground in a garden to achieve a similar, decorative effect.) Were the articles imported with a stand, the glass ornament would impart the essential character to the importation. See Headquarters Ruling Letters (HQs) 957367, dated March 5, 1995; 957413 dated March 31, 1995 and 953384, dated September 14, 1993, and rulings concerning similar articles cited therein.

Heading 7013, HTSUS, provides for "glassware of a kind used for table, kitchen, toilet, office, indoor decoration *or similar purposes* (other than that of heading 7010 or 7018) [emphasis added]." The Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, "of the same class or kind," teaches that "where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described." *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). The ENs to heading 7013, HTSUS, provide, in pertinent part, that:

> This heading covers the following types of articles, most of which are obtained by pressing or blowing in moulds:
>
> * * * * * * *
>
> (4) Glassware for indoor decoration and other glassware (including that for churches and the like), such as vases, ornamental fruit bowls, statuettes, fancy articles (ani-

mals, flowers, foliage, fruit, etc.), table-centres (other than those of heading 70.09), aquaria, incense burners, etc., and souvenirs bearing views.

These articles may be *e.g.*, of ordinary glass, lead crystal, glass having a low coefficient of expansion (*e.g.*, borosilicate glass) or of glass ceramics (the latter two in particular, for kitchen glassware). They may also be colourless, coloured or of flashed glass, and may be cut, frosted, etched or engraved, or otherwise decorated, or of plated glass (for example, certain trays fitted with handles).

* * * * * * *

Articles of glass combined with other materials (base metal, wood, etc.), are classified in this heading only if the glass gives the whole the character of glass articles.

We believe in this instance that the "gazing balls," decorative glass articles for *outdoor* use as decorations, are sufficiently similar to the articles enumerated in heading 7013 (such as * * * statuettes, fancy articles (animals, flowers, foliage, fruit, etc.), to warrant classification as such under heading 7013, HTSUS. That is, we find that the decorative glass articles for outdoor use are *ejusdem generis* with the decorative glass articles for indoor use described in the heading and EN to heading 7013, HTSUS.

The gazing ball is distinguishable from the articles classified in HQs 957367, 957413 and 953384. In those rulings, bell shaped glassware (which after importation would be sold with a stand), a floor standing glass vase with a metal stand, and, among other things, yards of ale in various sizes (which also following importation would be sold with stands), respectively, were classified in heading 7020, HTSUS. The rationale behind these rulings is that that glass articles were either parts of composite decorative, utilitarian goods or parts thereof, and because heading 7013 does not contain a parts provision, the articles fell to be classified in heading 7020. (See also *Riekes Crisa Corp v. United States*, 14 CIT 235, 245 (1990), in which the Court observed that "under well established principles of customs law, 'a tariff provision which does not specifically provide for parts does not include them.'" (citing *Glass Prods. v. United States*, 10 CIT 253, 255, 641 F. Supp. 813, 814 (1986).) The decorative glass ornaments for outdoor use, on the other hand, are capable, depending on the preference of the consumer, of being displayed upon importation.

An article is to be classified according to its condition as imported. See, *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). In their condition as imported, the decorative glass articles for display in gardens are substantially complete. That is, the articles do not require further working to fulfill their "function;" one needs only to decide how to display the articles, be it on a stake, stand or the ground.

GRI 2(a) provides, in pertinent part, that:

> 2(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article.

We find that, in their condition as imported, and in accordance with GRI 2(a), the articles have the essential character of decorative glass articles for outdoor use. Any stand (which is not imported contemporaneously) for the articles becomes ancillary; the stand facilitates the display of the articles.

The determination that decorative glass articles for outdoor use are classifiable under subheading 7013, HTSUS, comports with prior rulings of this office. In New York Ruling Letter (NY) 086166, dated April 9, 1990; in Headquarters Ruling Letters (HQ) 961004, dated May 5, 1999; and HQ 962066, dated September 22, 1998, "suncatchers" were classified under subheading 7013.99, HTSUS.

Holding:

At GRI 2(a), the decorative glass garden ornaments are classifiable in subheading 7013.99.00, HTSUS, which provides for other articles of glass, other. The classification of these articles at the eight-digit level will be determined by the value of the respective article.

Effect on Other Rulings:

NY D81179 is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF CUSTOMS RULING LETTER & TREATMENT RELATING TO TARIFF CLASSIFICATION OF A GARMENT SIMILAR TO A WINDBREAKER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of a ruling letter and treatment relating to the tariff classification of a garment similar to a windbreaker.

SUMMARY: Pursuant to Section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a garment similar to a windbreaker. Similarly, Customs is also revoking any treatment previously accorded by Customs to substantially identical merchandise that is contrary to the position set forth in this notice. Notice of the proposed action was published on December 20, 2000, in Volume 34, Number 51 of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textile Branch, (202) 927–1368.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke NY Ruling Letter ("NY") D89780, dated April 19, 1999, pertaining to the classification of a men's pullover garment was published on December 20, 2000, in Vol. 34, No. 51 of the CUSTOMS BULLETIN. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices.

As stated in the proposes notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

The subject garment was originally classified in NY D89780, dated April 19, 1999, in subheading 6211.33.0040 of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), as a men's shirt excluded from heading 6205. However, upon further review it was determined that the garment has the characteristics of a jacket rather than a shirt as set forth in the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88 (Nov. 23, 1988). The garment provides protection against the weather and it is Customs view that if the garment is found to be water resistant, the subject merchandise is more properly classified in subheading 6201.93.3000, HTSUSA, as a garment similar to a men's water resistant windbreaker and if the jacket is not determined to be water resistant, then the proper classification is subheading 6201.93.3511, HTSUSA, as a garment similar to a men's windbreaker of man-made fibers.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY D89780 and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the

HTSUS pursuant to the analysis set forth in HQ 964181. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: April 4, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 4, 2001.

CLA–2 RR:CR:TE 964181 mbg
Category: Classification
Tariff No. 6201.93.3000 and 6201.93.3511

MR. PATRICK PILLSBURY
CUTTER & BUCK
IMPORT MANAGER
2701 First Ave., #500
Seattle, WA 98121

Re: Men's Hybrid Shirt/Jacket; Revocation of NY D89780.

DEAR MR. PILLSBURY:

On April 19, 1999, U.S. Customs issued New York Ruling Letter ("NY") D89780 to AKA International, Inc. on behalf of Cutter & Buck, regarding the tariff classification of a windbreaker. The windbreaker was originally classified in heading 6211.33.0040 of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA") which provides for among other things, men's other woven garments not otherwise provided for. You requested that Customs Headquarters reconsider the classification of the subject merchandise and it is the determination of this office that the subject merchandise is more properly classified in subheading 6201.93.3000, HTSUSA, if determined to be water resistant or in the alternative in subheading 6201.93.3511, HTSUSA, if not determined to be water resistant pursuant to U.S. Additional Legal Note 2 for Chapter 62 of the HTSUSA.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on December 20, 2000, in Vol. 34, No. 51 of the CUSTOMS BULLETIN, proposing to revoke NY D89780 and to revoke the treatment pertaining to the men's garment similar to a windbreaker. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices.

Facts:

The merchandise submitted is a v-neck pullover short sleeved shirt made of polyester with a teflon impregnation and Climaguard fabric. The garment has an interior 100 percent polyester knit mesh lining. The lining covers the torso area only and does not extend to the sleeves. The waist features a ribknit waistband and there are two side seam pockets at waist level. The short sleeves are banded with ribknit cuffs that measure 20 inches in cir-

cumference. You claim that the shell fabric is Teflon® impregnated and therefore, the garment is both wind and water resistant.

Issue:

What is the proper classification of the subject merchandise?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The issue in the instant case is whether the submitted sample is properly classifiable as a men's shirt or jacket. A physical examination of the garment reveals that it possesses features traditionally associated with both jackets and shirts and therefore potentially lends itself to classification as either a coat or jacket under headings 6201 or 6211, HTSUSA, or as a shirt under heading 6205, HTSUSA.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the EN when interpreting the HTSUSA.

The ENs for heading 6205 state in pertinent part:

> This heading **does not cover** garments having the character of wind-cheaters, wind jackets, etc. of **heading 6201,** which generally have a tightening at the bottom, or of the jackets of **heading 6203,** which generally have pockets below the waist. Sleeveless garments are also excluded.

The subject merchandise has pockets at waist level and also has features associated with wind-cheaters or wind jackets such as ribknit bottom and an inner lining as well as construction of the outer shell using fabrication of polyester with teflon impregnation which provides more durability than is associated with most shirts. The subject merchandise is therefore precluded from classification as a shirt of heading 6205, HTSUS, pursuant to the EN.

In circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to *The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, ("*Guidelines*") is appropriate. The *Guidelines* were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles.

The *Guidelines* offer the following with regard to the classification of men's or boy's shirt-jackets:

> Three-quarter length or longer garments commonly known as coats, and other garments such as * * * waist length jackets fall within this category * * * A coat is an outerwear garment which covers either the upper part of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both. * * *
>
> * * * * * * *
>
> *Shirt-jackets* have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist * * *. The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:
>
> (1) Fabric weight equal to or exceeding 10 ounces per square yard * * *.
> (2) A full or partial lining.
> (3) Pockets at or below the waist.
> (4) Back vents or pleats. Also side vents in combination with back seams.
> (5) Eisenhower styling.
> (6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.

(7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
(8) Lapels.
(9) Long sleeves without cuffs.
(10) Elasticized or rib knit cuffs.
(11) Drawstring, elastic or rib knit waistband.

* * * * * * *

Garments having features of both jackets and shirts will be categorized as coats if they possess at least three of the above listed features and if the result is not unreasonable * * * Garments not possessing at least three of the listed features will be considered on an individual basis.

See Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE13/88 at 5–6 (Nov. 23, 1988).

Customs recognizes that the garment at issue is a hybrid garment, possessing features of both shirts and jackets. A physical examination of the garment at issue reveals that it possesses three of the *Guidelines* jacket criteria: the garment has elasticized or rib-knit cuffs, a ribbed waistband, and an inner lining. The garment therefore possesses the requisite number of *Guidelines* criteria and in addition is constructed from woven nylon which is typically used in windbreakers. The sample submitted is much like the jackets worn by golfers or other athletes for warmth or for protection from light rain.

We note that you claim this merchandise is similar to a hybrid shirt/jacket classified in heading 6202.92.2071, HTSUSA, as a women's anorak, wind breaker or similar article which was the subject of DD 898668, dated June 17, 1994. Customs disagrees with such reasoning for the subject merchandise. In DD 898668, the shirt/jacket had a full frontal zipper, whereas your merchandise is a pullover garment and the comparison with DD 898668 is inappropriate.

The next issue is whether the garment at issue is classifiable as a wind-breaker or similar article of heading 6201, HTSUSA, or as a shirt-jacket of heading 6211, HTSUSA. The Explanatory Notes (EN) to heading 6101, which apply *mutatis mutandis* to the articles of heading 6201, HTSUSA, state:

> [T]his heading covers * * * garments for men or boys, characterised by the fact that that they are *generally worn over all other clothing for protection against the weather.*

(emphasis added).

It is the opinion of this office that the fabric used in the construction of the subject merchandise will provide a degree of protection against the weather due to the overall styling, knit lining, and woven nylon fabric. Although the subject garment possesses short sleeves, Customs believes that the merchandise is similar to garments which have been classified as wind breakers or wind cheaters and which are typically worn by golfers. The shorter sleeves of this particular garment may be preferable to some golfers who want more flexibility in their swing and do not want to be hampered by long sleeves. Considering that the garment meets three of the *Guidelines* features and is constructed of material typically found in such golfing gear, Customs does not believe that the short sleeves preclude classification of the subject garment in heading 6201. Accordingly, the merchandise is classifiable as an article similar to a men's windbreaker under heading 6201, HTSUS.

You claim that the subject merchandise is water resistant but have not submitted any information which validates such claim. The Additional U.S. Note to Chapter 62 addresses the term "water resistant" and states in pertinent part:

> For the purposes of [subheading 6201.93.30], the term *"water resistant"* means that garments classifiable in those subheadings must have a water resistance (see ASTM designations D 3600–81 and D 3781–79) such that, under a head pressure of 600 millimeters, not more than 1.0 gram of water penetrates after two minutes when tested in accordance with AATCC Test Method 35–1985. This water resistance must be the result of a rubber or plastics application to the outer shell, lining, or inner lining.

The port of entry may perform such test for water resistant determinations and *if* the subject merchandise meets the aforementioned standards of U.S. Additional Note, Chapter 62, HTSUSA, the subject merchandise will be classified in subheading 6201.93.30, HTSUSA.

Holding:

NY D89780 is hereby revoked.

If the subject merchandise is determined to be water resistant, then the garment is classifiable under subheading 6201.93.3000, HTSUSA, which provides for "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers, and similar articles (including padded, sleeveless jackets), other than those of heading 6203: Anoraks (including ski jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other: Water resistant." The general column one rate of duty is 7.3% ad valorem. The applicable textile restraint category is 634.

If the subject merchandise is not determined to be water resistant, then the garment is classifiable under subheading 6201.93.3511, HTSUSA, which provides for "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers, and similar articles (including padded, sleeveless jackets), other than those of heading 6203: Anoraks (including ski jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other: Other: Men's." The general column one rate of duty is 28.4% ad valorem. The applicable textile restraint category is 634.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that your client check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is updated weekly and is available at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification), and the restraint (quota/visa) categories, your client should contact its local Customs office prior to importing the merchandise to determine the current applicability of any import restraints or requirements.

Effect on Other Rulings:

NY D89780 is revoked. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF BOBBY PINS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to the classification of bobby pins.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking and modifying ruling letters pertaining to the tariff classification of bobby pins and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of February 28, 2001, Vol. 35, No. 9. The comment received supported the proposed action.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202–927–1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. *§1484)* the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was pub-

lished on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9, proposing to revoke NY D82539, dated September 28, 1998, and modify NY E89973, dated December 1, 1999, D88160, dated February 22, 1999, E86446, dated August 30, 1999 and E80512, dated April 9, 1999, pertaining to the tariff classification of bobby pins under the Harmonized Tariff Schedule of the United States (HTSUS). The comment received in reply to the notice supported the proposed action.

In NY D82539, E89973, D88160, E86446 and E80512 the classification of a product commonly referred to as bobby pins was determined to be in heading 9615.90.60, HTSUS. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that classification is in error and that the product is properly classified in subheading 9615.90.30, HTSUS, which provides for combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof, other, hair pins.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY D82539 and modifying E89973, D88160, E86446, and E80512, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 964784, 964785, 964786, 964787, and 964802 *(see* Attachments "A" through "E" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

As stated in the proposal notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised the Customs Service during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this notice.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: April 5, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 5, 2001.

CLA–2 RR:CR:GC 964784ptl
Category: Classification
Tariff No. 9615.90.30

MS. ALPHA ROBINSON
LERNER NEW YORK
460 West 33rd Street
New York, NY 10001

Re: Bobby pins; NY D82539 revoked.

DEAR MS. ROBINSON:

In NY D82539, which the Director, National Commodity Specialist Division, New York, issued to you on September 28, 1998, several varieties of an article known as a bobby pin were classified, under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 9615.90.60, HTSUS, which provides for combs, hair-slides and the like; hair-pins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: other: other: other. We have reviewed that ruling and determined that the classification is incorrect. The correct classification of the articles is in subheading 9615.90.30, HTSUS, which provides for hair pins, pursuant to the analysis set forth below.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY D82539 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. The only comment received supported the proposal.

Facts:

The articles classified in NY D82539 are as follows:

Style #1294	bobby pin with butterfly
Style #3509	bobby pin with 11 imitation jet stones
Style #3905A	bobby pin with 11 imitation clear stones
Style #3536	bobby pin with big flowers
Style #3539	bobby pin with small flowers
Style #3546	bobby pin with 14 imitation black stones
Style #3546A	bobby pin with 14 imitation clear stones.

Issue:

What is the classification of bobby pins?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section

or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9615		Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts therof:
		Combs, hair-slides and the like:
*	* * * * * * *	
9615.90		Other
*	* * * * * * *	
9615.90.30		Hair pins.
9615.90.60		Other:

In this instance, neither the HTSUS, its legislative history, nor the ENs define the term "hairpins". In the absence of a definition of a term in the tariff or its legislative history, the term's correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)) Since NY D82539 was issued, additional research on the subject by Customs has produced the following information. The Random House *Dictionary of the English Language*, Unabridged (1973), page. 637, defines "hair pin" as "1. a slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress." The same dictionary, page 164 defines a "bobby pin" as "a flat, springlike metal hairpin having the prongs held close together by tension." The Compact Edition of the Oxford English Dictionary, Vol III, (1987), page 78, identifies "bobby pin" as being a U.S. term and defines it as "A kind of sprung hair-pin or small clip, orig. for use with bobbed hair." These definitions imply that a bobby pin is a type of hairpin.

The tariff provision for hairpins is considered an *eo nomine* provision, in that it describes goods by a specific name. A fundamental rule of tariff classification is that an *eo nomine* provision that names an article without terms of limitation and, absent evidence of contrary legislative intent, is deemed to include all forms of the article. *Nootka Packing Co., v. United States*, 22 CCPA 464, T.D. 47464 (1935).

Bobby pins and hair pins are used similarly for the purpose of holding a specific portion of the users hair in a particular position. Both are functional articles used to keep one's hair in place. Because of this similarity of use and function, and because of the common understanding and definition of the term "bobby pin", we have determined that bobby pins are included within the coverage of *eo nomine* provision for hairpins and by application of GRI 1, are classified in subheading 9615.90.30, HTSUS.

Holding:

Bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for: Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts therof: [o]ther; [h]air pins.

NY D82539, dated September 28, 1998, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 5, 2001.

CLA–2 RR:CR:GC 964802ptl
Category: Classification
Tariff No. 9615.90.30

MR. ALAN WOODRUFF
LERNER NEW YORK
460 West 33rd Street
New York, NY 10001

Re: Bobby pins; NY E89973 modified.

DEAR MR. WOODRUFF:

In NY E89973, which the Director, National Commodity Specialist Division, New York, issued to you on December 1, 1999, two articles were classified, under the Harmonized Tariff Schedule of the United States (HTSUS). One of them, a variety of an article known as a bobby pin, was classified in subheading 9615.90.60, HTSUS, which provides for combs hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: other: other: other. We have reviewed that ruling and determined that the classification of the bobby pins is incorrect. The correct classification of the bobby pins is in subheading 9615.90.30, HTSUS, which provides for hair pins, pursuant to the analysis set forth below. Classification of a barrette, the other article in NY E89973 is not altered by this ruling.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY E89973 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. The only comment received supported the proposal.

Facts:

The article, referred to as a bobby pin, classified in NY E80512 is described as follows:

Style #0620 — a metal bobby pin, 2″ in length, the top portion is decorated with metal and plastic beads.

Issue:

What is the classification of bobby pins?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9615	Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts therof:						
	Combs, hair-slides and the like:						
*	*	*	*	*	*	*	
9615.90	Other						
*	*	*	*	*	*	*	
9615.90.30		Hair pins.					
9615.90.60		Other:					

In this instance, neither the HTSUS, its legislative history, nor the ENs define the term "hairpins". In the absence of a definition of a term in the tariff or its legislative history, the term's correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)) Since NY E89973 was issued, additional research on the subject by Customs has produced the following information. The Random House *Dictionary of the English Language*, Unabridged (1973), page. 637, defines "hair pin" as "1. a slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress." The same dictionary, page 164 defines a "bobby pin" as "a flat, springlike metal hairpin having the prongs held close together by tension." The Compact Edition of the Oxford English Dictionary, Vol III, (1987), page 78, identifies "bobby pin" as being a U.S. term and defines it as "A kind of sprung hair-pin or small clip, orig. for use with bobbed hair." These definitions imply that a bobby pin is a type of hairpin.

The tariff provision for hairpins is considered an *eo nomine* provision, in that it describes goods by a specific name. A fundamental rule of tariff classification is that an *eo nomine* provision that names an article without terms of limitation and, absent evidence of contrary legislative intent, is deemed to include all forms of the article. *Nootka Packing Co., v. United States*, 22 CCPA 464, T.D. 47464 (1935).

Bobby pins and hair pins are used similarly for the purpose of holding a specific portion of the users hair in a particular position. Both are functional articles used to keep one's hair in place. Because of this similarity of use and function, and because of the common understanding and definition of the term "bobby pin", we have determined that bobby pins are included within the coverage of *eo nomine* provision for hairpins and by application of GRI 1, are classified in subheading 9615.90.30, HTSUS.

Holding:

Bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for: Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts therof: [o]ther; [h]air pins.

NY E89973, dated December 1, 1999, is modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 5, 2001.

CLA–2 RR:CR:GC 964786ptl
Category: Classification
Tariff No. 9615.90.30

MS. ALPHA ROBINSON
LERNER NEW YORK
460 West 33rd Street
New York, NY 10001

Re: Bobby pins; NY D88160 modified.

DEAR MS. ROBINSON:

In NY D88160, which the Director, National Commodity Specialist Division, New York, issued to you on February 22, 1999, several hair accessories were classified, under the Harmonized Tariff Schedule of the United States (HTSUS). Among them, two varieties of an article known as a bobby pin were classified in subheading 9615.90.60, HTSUS, which provides for combs hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: other: other: other. We have reviewed that ruling and determined that the classification of the bobby pins is incor-

rect. The correct classification of the bobby pins is in subheading 9615.90.30, HTSUS, which provides for hair pins, pursuant to the analysis set forth below. Classification of the other articles in NY D88160 is not altered by this ruling.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY D88160 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. The only comment received supported the proposal.

Facts:

The bobby pins classified in NY D88160 are as follows:

Style #3539	"Small flower bobby pin". A pair of metal bobby pins with each bobby pin decorated with a flower made of small imitation gemstones.
Style #4509	"Pearls on bobby pin". A pair of metal bobby pins with each bobby pin decorated on one side with a row of imitation pearls.

Issue:

What is the classification of bobby pins?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9615		Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts therof:
		Combs, hair-slides and the like:
*	* * * * * * *	
9615.90		Other
*	* * * * * * *	
9615.90.30		Hair pins.
9615.90.60		Other:

In this instance, neither the HTSUS, its legislative history, nor the ENs define the term "hairpins". In the absence of a definition of a term in the tariff or its legislative history, the term's correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)) Since NY D88160 was issued, additional research on the subject by Customs has produced the following information. The Random House *Dictionary of the English Language*, Unabridged (1973), page. 637, defines "hair pin" as "1. a slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress." The same dictionary, page 164 defines a "bobby pin" as "a flat, springlike metal hairpin having the prongs held close together by tension." The Compact Edition of the Oxford English Dictionary, Vol III, (1987), page 78, identifies "bobby pin" as being a U.S. term and defines it as "A kind of sprung hair-pin or small clip, orig. for use with bobbed hair." These definitions imply that a bobby pin is a type of hairpin.

The tariff provision for hairpins is considered an *eo nomine* provision, in that it describes goods by a specific name. A fundamental rule of tariff classification is that an *eo nomine* provision that names an article without terms of limitation and, absent evidence of contrary legislative intent, is deemed to include all forms of the article. *Nootka Packing Co., v. United States*, 22 CCPA 464, T.D. 47464 (1935).

Bobby pins and hair pins are used similarly for the purpose of holding a specific portion of the users hair in a particular position. Both are functional articles used to keep one's hair

in place. Because of this similarity of use and function, and because of the common understanding and definition of the term "bobby pin", we have determined that bobby pins are included within the coverage of *eo nomine* provision for hairpins and by application of GRI 1, are classified in subheading 9615.90.30, HTSUS.

Holding:

Bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for: Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts therof: [o]ther; [h.]air pins.

NY D88160, dated February 22, 1999, is modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 5, 2001.

CLA–2 RR:CR:GC 964787ptl
Category: Classification
Tariff No. 9615.90.30

MR. ALAN WOODRUFF
LERNER NEW YORK
460 West 33rd Street
New York, NY 10001

Re: Bobby pins; NY E86446 modified.

DEAR MR. WOODRUFF:

In NY E86446, which the Director, National Commodity Specialist Division, New York, issued to you on August 30, 1999, several hair accessories were classified, under the Harmonized Tariff Schedule of the United States (HTSUS). Among them, a variety of an article known as a bobby pin was classified in subheading 9615.90.60, HTSUS, which provides for combs hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: other: other: other. We have reviewed that ruling and determined that the classification of the bobby pins is incorrect. The correct classification of the bobby pins is in subheading 9615.90.30, HTSUS, which provides for hair pins, pursuant to the analysis set forth below. Classification of the other articles in NY E86446 is not altered by this ruling.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY E86446 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. The only comment received supported the proposal.

Facts:

The article, referred to as a bobby pin, classified in NY E86446 is described as follows:

Style #4585	a pair of steel bobby pins, 2″ in length, covered with strung glass beads and a flower made of strung glass beads at the end.

Issue:

What is the classification of bobby pins?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section

or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9615	Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts therof:
	Combs, hair-slides and the like:
* * * * * * *	
9615.90	Other
* * * * * * *	
9615.90.30	Hair pins.
9615.90.60	Other:

In this instance, neither the HTSUS, its legislative history, nor the ENs define the term "hairpins". In the absence of a definition of a term in the tariff or its legislative history, the term's correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)) Since NY E86446 was issued, additional research on the subject by Customs has produced the following information. The Random House *Dictionary of the English Language*, Unabridged (1973), page. 637, defines "hair pin" as "1. a slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress." The same dictionary, page 164 defines a "bobby pin" as "a flat, springlike metal hairpin having the prongs held close together by tension." The Compact Edition of the Oxford English Dictionary, Vol III, (1987), page 78, identifies "bobby pin" as being a U.S. term and defines it as "A kind of sprung hair-pin or small clip, orig. for use with bobbed hair." These definitions imply that a bobby pin is a type of hairpin.

The tariff provision for hairpins is considered an *eo nomine* provision, in that it describes goods by a specific name. A fundamental rule of tariff classification is that an *eo nomine* provision that names an article without terms of limitation and, absent evidence of contrary legislative intent, is deemed to include all forms of the article. *Nootka Packing Co., v. United States*, 22 CCPA 464, T.D. 47464 (1935).

Bobby pins and hair pins are used similarly for the purpose of holding a specific portion of the users hair in a particular position. Both are functional articles used to keep one's hair in place. Because of this similarity of use and function, and because of the common understanding and definition of the term "bobby pin", we have determined that bobby pins are included within the coverage of *eo nomine* provision for hairpins and by application of GRI 1, are classified in subheading 9615.90.30, HTSUS.

Holding:

Bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for: Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts therof: [o]ther; [h]air pins.

NY E86446, dated August 30, 1999, is modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director.
Commercial Rulings Division.)

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 5, 2001.

CLA–2 RR:CR:GC 964802ptl
Category: Classification
Tariff No. 9615.90.30

MS. GLADYS DIAZ
JOHN T. RAIA CUSTOMHOUSE BROKERS
One Industrial Plaza, Building D
Valley Stream, NY 11581

Re: Bobby pins; NY E80512 modified.

DEAR MS. DIAZ:

In NY E80512, which the Director, National Commodity Specialist Division, New York, issued to you on behalf of Panaria International, Inc., on April 8, 1999, two articles were classified, under the Harmonized Tariff Schedule of the United States (HTSUS). One of them, a variety of an article known as a bobby pin, was classified in subheading 9615.90.60, HTSUS, which provides for combs hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: other: other: other. We have reviewed that ruling and determined that the classification of the bobby pins is incorrect. The correct classification of the bobby pins is in subheading 9615.90.30, HTSUS, which provides for hair pins, pursuant to the analysis set forth below. Classification of the hair clip, the other article in NY E80512 is not altered by this ruling.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY E80512 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. The only comment received supported the proposal.

Facts:

The article, referred to as a bobby pin, classified in NY E80512 is described as follows:

A metal bobby pin measuring approximately 2¼ inches in length with a metal, iridescent painted, butterfly attached.

Issue:

What is the classification of bobby pins?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9615	Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts therof:
	Combs, hair-slides and the like:
* * * * * * *	
9615.90	Other
* * * * * * *	
9615.90.30	Hair pins.
9615.90.60	Other:

In this instance, neither the HTSUS, its legislative history, nor the ENs define the term "hairpins". In the absence of a definition of a term in the tariff or its legislative history, the term's correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)) Since NY E80512 was issued, additional research on the subject by Customs has produced the following information. The Random House *Dictionary of the English Language*, Unabridged (1973), page. 637, defines "hair pin" as "1. a slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress." The same dictionary, page 164 defines a "bobby pin" as "a flat, springlike metal hairpin having the prongs held close together by tension." The Compact Edition of the Oxford English Dictionary, Vol III, (1987), page 78, identifies "bobby pin" as being a U.S. term and defines it as "A kind of sprung hair-pin or small clip, orig. for use with bobbed hair." These definitions imply that a bobby pin is a type of hairpin.

The tariff provision for hairpins is considered an *eo nomine* provision, in that it describes goods by a specific name. A fundamental rule of tariff classification is that an *eo nomine* provision that names an article without terms of limitation and, absent evidence of contrary legislative intent, is deemed to include all forms of the article. *Nootka Packing Co., v. United States*, 22 CCPA 464, T.D. 47464 (1935).

Bobby pins and hair pins are used similarly for the purpose of holding a specific portion of the users hair in a particular position. Both are functional articles used to keep one's hair in place. Because of this similarity of use and function, and because of the common understanding and definition of the term "bobby pin", we have determined that bobby pins are included within the coverage of *eo nomine* provision for hairpins and by application of GRI 1, are classified in subheading 9615.90.30, HTSUS.

Holding:

Bobby pins are classified in subheading 9615.90.30, HTSUS, which provides for: Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts therof: [o]ther; [h]air pins.

NY E80512, dated April 9, 1999, is modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF THERMOCOUPLES AND THERMOPILES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of thermocouples and thermopiles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of thermocouples and thermopiles under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before June 1, 2001.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of thermocouples and thermopiles. Although in this notice Customs is specifically referring to one ruling, HQ 961147, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation

of the Harmonized Tariff Schedule of the United States ("HTSUS"). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In HQ 961147 dated December 17, 1997, set forth as Attachment A to this document, Customs classified certain thermocouples and thermopiles in subheading 9025.19.80, Harmonized Tariff Schedule of the United States ("HTSUS"), which covers: "* * * thermometers * * *: Thermometers and pyrometers, not combined with other instruments: * * * Other: * * * Other." It is now Customs position that the thermocouples and thermopiles are classified in subheading 8543.89.96, HTSUS, as: "Electrical machines or apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: * * * Other machines and apparatus: * * * Other: * * * Other: * * * Other: * * * Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 961147 and any other ruling not specifically identified in order to reflect the proper classification of the thermocouples and thermopiles pursuant to the analysis set forth in proposed HQ 964833, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: March 5, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 17, 1997.

CLA–2 RR:CR:GC 961147 DWS
Category: Classification
Tariff No. 9025.19.80

MS. LAURIE L. ANDERSON
HONEYWELL INC.
P.O. Box 524
Minneapolis, MN 55440–0524

Re: Reconsideration of PC 865048; Thermocouples and Thermopiles; Explanatory Note 90.25(B)(5)(ii); Section XVI, Note 1(m); 8416.90.00.

DEAR MS. ANDERSON:

This is in response to your letter of September 23, 1997, to the Customs Field National Import Specialist, Otey Mesa, California, requesting reconsideration of PC 865048, dated August 16, 1991, concerning the classification of thermocouples and thermopiles under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter was referred to this office for a response.

Facts:

The merchandise consists of thermocouples and thermopiles for gas pilot burners. The thermocouples are clamp type, screw-in type, or push-in type products which are mounted into the pilot burners. They provide power to the safety cut-off coil of the V family of gas valves. In response to a change in temperature, the thermocouples produce a 30 millivolt (mV) current to the pilot portion of the valve, opening or closing the valve. It is our understanding that the thermopiles, which are of the push-in type or screw-in type mounted into the pilot burners, operate in a similar manner as the thermocouples, except that, in response to a change in temperature, the thermopiles produce a 750 mV current to the pilot portion of the valve, opening or closing the valve.

Issue:

Whether the thermocouples and thermopiles are classifiable under subheading 8416.90.00, HTSUS, as parts of furnace burners, or under subheading 9025.19.80, HTSUS, as other thermometers, not combined with other instruments.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8416.90.00: [f]urnace burners for liquid fuel, for pulverized solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances; parts thereof: [p]arts.

The general, column one rate of duty for goods classifiable in this provision is 1.4 percent ad valorem.

9025.19.80: [h]ydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof: [t]hermometers and pyrometers, not combined with other instruments: [o]ther: [o]ther.

The general, column one rate of duty for goods classifiable in this provision is 3.1 percent ad valorem.

In PC 865048, Customs held the thermocouples and thermopiles to be classifiable under subheading 9025.19.00, HTSUS (the precursor subheading to 9025.19.80, HTSUS).

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See*

T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, Explanatory Note 90.25(B)(5)(ii) (p. 1632) states:

(A) xxx

(B) THERMOMETERS, THERMOGRAPHS AND PYROMETERS

This group includes:

(1) – (4) xxx

(5) **Electrical thermometers and pyrometers**, such as:

(i) xxx

(ii) **Thermocouple thermometers and pyrometers** based on the principle that the heating of the junction of two different electric conductors generates an electro-motive force proportional to the temperature. The combinations of metals used are generally: platinum with rhodium-platinum; copper with copper-nickel; iron with copper-nickel; nickel-chromium with nickel-aluminium.

It is our understanding that the subject thermocouples and thermopiles operate in a similar manner to the thermocouple thermometers described in Explanatory Note 90.25(B)(5)(ii). Both devices, in response to heat, produce a 30 mV and 750 mV current, respectively, to the pilot portion of the valve, opening the valve. Their reaction to the heat generates an electro-motive force (opening the valve) proportional to the rise in temperature.

Therefore, we find that the thermocouples and thermopiles are classifiable under subheading 9025.19.80, HTSUS.

You claim that the thermocouples and thermopiles are classifiable under subheading 8416.90.00, HTSUS. Section XVI, note 1(m), HTSUS, states:

1. This section does not cover:

(a) – (l) xxx

(m) Articles of chapter 90.

Consequently, because the thermocouples and thermopiles are classifiable in chapter 90, HTSUS, they are precluded from classification in heading 8416, HTSUS.

Holding:

The thermocouples and thermopiles are classifiable under subheading 9025.19.80, HTSUS, as other thermometers, not combined with other instruments.

Effect on Other Rulings:

PC 865048 is affirmed.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964833 GOB
Category: Classification
Tariff No. 8543.89.96

MS. LAURIE L. ANDERSON
HONEYWELL INC.
P.O. Box 524
Minneapolis, MN 55440-0524

Re: HQ 961147 revoked; Thermocouples; Thermopiles.

DEAR MS. ANDERSON:

This letter is with respect to HQ 961147 dated December 17, 1997, issued to you by this office concerning the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of certain thermocouples and thermopiles.

Facts:

The goods at issue are thermocouples and thermopiles for gas pilot burners. The thermocouples are clamp type, screw-in type, or push-in type products which are mounted into the pilot burners. They provide power to the safety cut-off coil of the V family of gas valves. In response to a change in temperature, the thermocouples produce a 30 millivolt current to the pilot portion of the valve, thereby opening or closing the valve. The thermopiles, which are of the push-in or screw-in type mounted into the pilot burners, operate in a similar manner as the thermocouples with the difference that, in response to a change in temperature, the thermopiles produce a 750 millivolt current to the pilot portion of the valve, thereby opening or closing it.

In HQ 961147, we classified the thermocouples and thermopiles in subheading 9025.19.80, HTSUS, as: "* * * thermometers * * *: Thermometers and pyrometers, not combined with other instruments: * * * Other: * * * Other." We have reviewed that classification and have determined that it is incorrect. The correct classification is set forth below.

Issue:

What is the tariff classification of the thermocouples and thermopiles?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8416	Furnace burners for liquid fuel, for pulverized solid fuel or for gas; * * * parts thereof:
8416.90.00	Parts.
* * * * * *	
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
8543.89	Other:
	Other:
	Other:
8543.89.96	Other.
* * * * * *	
9025	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof:
	Thermometers and pyrometers, not combined with other instruments:
9025.19	Other:
9025.19.80	Other.

"Thermometer" is defined as follows in *The Random House Dictionary* (unabridged edition; 1973): "an instrument for measuring temperature, often consisting of a sealed glass tube that contains a column of liquid, as mercury, which expands and contracts, or rises and falls, with temperature changes, the temperature being read where the top of the column coincides with a calibrated scale marked on the tube or its frame."

The thermocouples and thermopiles are not thermometers as they do not measure temperature. They produce electrical power when the flame of the pilot light heats the tube; they stop producing electricity when the flame goes out and the tube cools. We note further

that the thermocouples and thermopiles are not "thermocouple thermometers" as that term is used in EN 90.25(B)(5)(ii). Accordingly, classification in heading 9025, HTSUS, is precluded.

EN 85.43 provides, in pertinent part: "This heading covers all electrical appliances and apparatus, **not falling** in any other heading of the Chapter, **nor covered more specifically** by a heading of any other Chapter of the nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of **Chapter 84** and certain instruments and apparatus of **Chapter 90.**" [All Emphasis in original.]

Note 2 to Section XVI, HTSUS, provides in pertinent part as follows:

> Subject to Note 1 to this section, note 1 to Chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:
>
> (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8585, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;
>
> * * * * * * *

Based on the text of heading, 8543, and supported by EN 85.43, we find that the thermocouples and thermopiles are goods included in heading 8543, HTSUS. Accordingly, pursuant to Note 2(a) to Chapter XVI, HTSUS, we determine that they are provided for in heading 8543, HTSUS. Therefore, the thermocouples and thermopiles are not classified pursuant to Note 2(b). This would eliminate a claim that the goods are classified in heading 8416 as parts of furnace burners (i.e., parts suitable for use solely or principally with furnace burners).

Accordingly, we find that the thermocouples and thermopiles are classified in subheading 8543.89.96, HTSUS, as: "Electrical machines or apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: * * * Other machines and apparatus: * * * Other: * * * Other: * * * Other: * * * Other."

Holding:

The thermocouples and thermopiles are classified in subheading 8543.89.96, HTSUS, as: "Electrical machines or apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: * * * Other machines and apparatus: * * * Other: * * * Other: * * * Other: * * * Other."

Effect on Other Rulings:

HQ 961147 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF CUSTOMS RULING LETTER & REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A CHILD'S LIPSTICK CASE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter and revocation of treatment relating to the classification of a child's Winnie the Pooh lipstick case.

SUMMARY: Pursuant to Section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of a child's lipstick case with an outer surface of plastic material. Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed action was published on February 28, 2001, in the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textile Branch, (202) 927–1368.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke NY Ruling Letter ("NY") E85727, dated August 17, 1999, pertaining to the classification of a child's lipstick case from China was published on February 28, 2001, in Vol. 35, No. 9 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

As stated in the proposed notice, this modification will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In NY E85727, dated August 17, 1999, concerning the tariff classification of a child's Winnie the Pooh lipstick case with an outer surface of polyvinyl chloride material, the product was erroneously classified under subheading 4202.92.4500 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) as a travel, sports or similar bag with an outer surface of sheeting of plastic. The item under review is not a travel or sports bag but is the type of merchandise which is typically carried by women or girls in their handbags or pockets to hold lipsticks, and therefore classification is subheading 4202.92.4500, HTSUSA is inappropriate. The correct classification for the product should be under subheading 4202.32.1000 of the HTSUSA as an item normally carried in a wallet or handbag with an outer surface of sheeting of plastic.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is modifying NY E85727 and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUS pursuant to the analysis set forth in HQ 964181. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: April 11, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 11, 2001.

CLA–2 RR:CR:TE 963429 mbg
Category: Classification
Tariff No. 4202.32.1000

BARBARA Y. WIERBICKI, ESQ.
THOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036–8901

Re: Request for reconsideration of NY E85727; Classification of a "lipstick case" from China.

DEAR MS. WIERBICKI:

This is in reply to your letter, on behalf of your client Avon Products, Inc., dated September 15, 1999, wherein you request reconsideration of New York Ruling Letter ("NY") E85727, dated August 17, 1999. In NY E85727, a child's lipstick case was classified in subheading 4202.92.4500 under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). Upon review by the Office of Regulations & Rulings, NY E85727 is hereby modified for the reasons set forth below and the subject merchandise is classified in subheading 4202.32.1000, HTSUSA.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on February 28, 2001, in Vol. 35, No. 9 of the CUSTOMS BULLETIN, proposing to modify NY E85727 and to revoke the treatment pertaining to the classification of a child's lipstick case from China. No comments were received in response to this notice.

Facts:

The subject merchandise is identified as a child's Winnie the Pooh lipstick case. In NY E85727 the lipstick case and a wallet were classified, but this reconsideration only concerns the lipstick case.

The lipstick case has an exterior surface of textile reinforced polyvinyl chloride and measures approximately 3 inches wide by 4 inches tall by 1 inch deep. The merchandise consists of a single rectangular compartment with full flap closure and holds three conventional sized lipsticks. The inside flap incorporates a plastic mirror, measuring approximately 3 inches by 4 inches in a cutout representing a silhouette of Winnie the Pooh's head. The flap is secured with a snap closure.

Issue:

What is the proper classification for the subject merchandise under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the

terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

Heading 4202, HTSUSA provides for "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper."

Thus, this heading encompasses the articles enumerated, as well as containers similar to these articles.

The EN to heading 4202 suggest that the expression "similar containers" in the first part of the heading "includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc." With regard to the second part of heading 4202, the EN indicate that the expression "similar containers" indicates articles which must be wholly or mainly composed of the materials specified therein and includes "note-cases, writing-cases, pen-cases, ticket-cases, needle-cases, key-cases, cigar-cases, pipe-cases, tool and jewelry rolls, shoe-cases, brush-cases, etc." There is no requirement that the articles be specially shaped or fitted.

Heading 4202 indicates coverage is for only the articles specifically named and similar containers. Inasmuch as "lipstick cases" are not *eo nomine* provided for in heading 4202, HTSUSA, we must consider whether or not the goods are classifiable as "similar containers" under heading 4202, HTSUSA. Applying the principle of statutory construction known as *ejusdem generis*, which means "of the same kind," Customs finds that the subject merchandise is covered by the term "similar containers."

Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). In *Totes*, the Court of Appeals for the Federal Circuit ("CAFC") affirmed the Court of International Trade's ("CIT") determination that the "essential characteristics and purpose of Heading 4202 exemplars are * * * to organize, store, protect and carry various items." *Id.*

The CIT recently considered a classification issue similar to the subject merchandise involving heading 4202, HTSUS, in the case of *Len-Ron Manufacturing Co., Inc. v. United States*. In *Len-Ron*, the court considered the classification of small bags which were used by women to hold cosmetics and various personal items. The court determined that those bags were properly classified as vanity cases of subheading 4202.12, HTSUS, rather than as travel bags of subheading 4202.92, HTSUS, or as articles normally carried in a pocket or handbag in subheading 4202.32, HTSUS. The court defined a "vanity case" broadly to be "a small handbag or case used to hold cosmetics." *Len-Ron Manufacturing Co., Inc. v. United States*, 118 F.Supp 2d 1266 (2000). However, the CIT also discussed subheading 4202.32, HTSUS, and stated, "The class or kind defined by the subheading appears to be items which have independent and various functions, albeit normally carried in the pocket or in the handbag." *Id.* "Subheading 4202.32, HTSUS, is a broad provision encompassing a variety of articles with specific and independent uses as illustrated by the Explanatory Notes." *Id.* The instant merchandise is not a generic vanity case for cosmetics like the merchandise under consideration in *Len-Ron*. The lipstick case is designed specifically to hold three tubes of lipstick which are then carried in a women's pocket or most likely in a handbag.

The CIT further stated, "subheading 4202.32, HTSUS, addresses the manner in which articles are employed or transported." *Id.*

Accordingly, the subject merchandise, which is substantially constructed and is designed to carry and protect a woman's lipsticks is classifiable within subheading 4202.32, HTSUS, as similar to a wallet or spectacle case whose function is to organize, store, or protect personal items. Furthermore, due to the size, purpose and function of the lipstick case, women tend to carry such an item either on their person or in their handbags and classification within subheading 4202.32, HTSUS, as an article of a kind normally carried in a pocket or handbag is appropriate. This classification is consistent with Customs rulings which have consistently placed lipstick cases in subheading 4202.32. *See e.g.,* NY 818813, dated Feb. 20, 1996; PD A85182, dated July 10, 1996; PD C82693, dated Jan. 5, 1998; PD C86634 dated May 5, 1998; NY D81178, dated Aug. 19, 1998; NY D86874, dated Feb. 9, 1999; and PD D86452, dated Jan. 26, 1999.

Holding:

NY E85727 is hereby modified.

The lipstick case is properly classified in subheading 4202.32.1000, HTSUSA as "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Articles of a kind normally carried in the pocket or in the handbag: With outer surface of sheeting of plastic or of textile materials: With outer surface of sheeting of plastic: Of reinforced or laminated plastics." The lipstick case is dutiable at general column one duty rate of 12.1 cents per kg plus a rate of duty of 4.6 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification), you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Effect on Other Rulings:

NY E85727 is modified. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A STEEL SETTING TOOL FOR DROP-IN ANCHORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letters and revocation of treatment relating to the classification of a steel setting tool for drop-in anchors.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying two rulings and revoking any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of a steel setting tool for drop-in anchors, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed modifications was published on March 7, 2001, in Vol. 35, No. 10 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927–2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to modify New York Ruling Letters (NY) A89247 and A89248, both dated March 10, 1999, which pertain to the classification of, *inter alia*, a steel setting tool for drop-in anchors, was published on March 7, 2001, in Vol. 35, No. 10 of the CUSTOMS BULLETIN. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices. As stated in the proposed notice, these modification actions will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is modifying NYs A89247 and A89248, both dated March 10, 1999, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 962307 (*see* the Attachment to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: April 9, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 9, 2001.

CLA–2 RR:CR:GC 962307 AML
Category: Classification
Tariff No. 8205.59.5560

MR. JEFF GREEN
V.P. OF OPERATIONS
M. GREEN CO.
3375 Homestead Road #10
Santa Clara, CA 95051

Re: Base metal setting tool for drop-in anchors.

DEAR MR. GREEN:

This is in reference to New York Ruling Letters (NY) A89247 and A89248, both dated November 12, 1996, which classified, among other articles, a steel setting tool for drop-in anchors under subheading 7326.90.8585 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of iron or steel: other. We have reconsidered NY A89247 and A89248 and now believe that the classification of the base metal setting tool for the drop-in anchors is incorrect. This letter sets forth the correct classification of the setting tool. The classification of the other articles in the respective rulings remains the same.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on March 7, 2001, in Vol. 35, No. 10 of the CUSTOMS BULLETIN, proposing to modify NY A89247 and A89248 and to revoke the treatment pertaining to the steel setting tool. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices.

Facts:

The setting tool was described in NY A89247 as follows:

> [T]he setting tool, is a two-section dowel composed of steel, approximately 4 1/2 inches in length. The dowel is approximately 3/8 of an inch in diameter for most of its length. The last 5/8 inches of the dowel is 1/8 inch in diameter. The tool operates by inserting the narrow end into the chamber of the anchor and then the anchor is driven into a pre-made hole by hammering on the end of the tool.

The setting tool was described in NY A89248 as follows:

> Setting Tool for 1/4" Caulking Machine Screw Anchor—made of steel for use in installing anchors, drop-ins, etc. The setting tool is actually hammered to facilitate the installation.

Although you did not clarify within your original request whether the setting tool was going to be packaged together with the anchors, sales literature submitted with the original requests indicates that there will be one setting tool packaged with every 100 anchors.

Issue:

Whether the steel setting tool for drop-in anchors is classifiable under subheading 7326.90.8585, HTSUS, which provides for other articles of iron or steel, other; or under subheading 8205.59.5560, HTSUS, which provides for other iron or steel handtool[s] not elsewhere specified or included, other?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

7326	Other articles of iron or steel:
	Forged or stamped, but not further worked:
7326.90	Other:
7326.90.85	Other.
* * * * * * *	
8205	Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof:
	Other handtools (including glass cutters) and parts thereof:
8205.59	Other:
8205.59.55	Other:
8205.59.55.60	Other (including parts).

Customs is satisfied that the drop-in anchors in each of the above-mentioned rulings are properly classified. However, the setting tool for the drop-in anchors was not properly classified in those rulings. The classification of the setting tool will depend on its condition as imported, *i.e.*, whether it is imported with the fasteners with which it will be used or whether it is imported separately from any other articles.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 7326, HTSUS, provide, in pertinent part, that:

> This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating other than articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in Chapter 82 or 83 or more specifically covered elsewhere in the Nomenclature.

The General ENs to Chapter 85 provide, in pertinent part, that:

> This Chapter includes:
>
> (A) Tools which, apart from certain specified exceptions (*e.g.*, blades for machine saws), are used in the hand (headings 82.01 to 82.05).
>
> (B) Tools of two or more of the headings 82.02 to 82.05, put up in sets for retail sale (heading 82.06).

The ENs to heading 8205, HTSUS, provide, in pertinent part, that:

> This heading covers all hand tools not included in other headings of this Chapter or elsewhere in the Nomenclature[.]
>
> It includes a large number of hand tools (including some with simple hand-operated mechanisms such as cranks, ratchets or gearing). This group of tools includes:
>
> * * * * * * *
>
> (E) Other hand tools (including glaziers' diamonds).
>
> This group includes:
>
> * * * * * * *
>
> (7) Miscellaneous hand tools such as * * * cold chisels and punches * * *.

Although the term "tool" is not defined in the HTSUS, it is presumed that Congress intended to apply its common and commercial meaning. *Brookside Veneers, LTD v. United States*, 847 F. 2d 789 (1988). To ascertain the common and commercial meaning of a term, dictionaries and other lexicographic authorities may be consulted. *Austin Chem. Co. v. United States*, 835 F. 2d 1423 (Fed. Cir. 1987). A "tool" is described as "[a] hand-held implement, as a hammer, saw, or drill, used in accomplishing work." *Webster's II New Riverside University Dictionary*, p. 1217 (1984). The subject setting tool satisfies this description. It is a hand-held implement used to accomplish the work of setting drop-in anchors; that is, the setting tools are held in the hand and struck with a hammer in order to secure the anchor bolts in masonry or other hard, durable surface.

Imported separately from any other articles, the setting tool, comprised of base metal and designed to be used by hand, is *prima facie* classifiable at GRI 1 under heading 8205, HTSUS, which provides for other handtools not elsewhere specified or included, specifically at subheading 8205.59.55. The setting tool is not more specifically provided for elsewhere in the HTSUS, and it is more aptly described as a tool than as an other article of metal.

When the setting tools are imported with the drop-in anchors, the analysis changes. GRI 2(b) provides that the classification of goods consisting of more than one material or substance shall be according to the principles of [GRI] 3. GRI 3 provides in pertinent part that composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

In those instances in which the setting tools are imported with the drop-in anchors with which they will be used, Customs would consider the articles to be a set as contemplated by GRI 3(b). See, generally, the Informed Compliance Publication (ICP) entitled "What Every Member of the Trade Community Should Know About: Classification of Sets under the HTS" (September, 1999) and EN X to GRI 3(b):

> For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
>
> (a) consist of at least two different articles which are, *prima facie* classifiable in different headings;
>
> (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
>
> (c) are put up in a manner suitable for sale directly to users without repacking (*e.g.*, in boxes or cases or on boards).

The setting tool is provided with 100 anchors. The two distinct articles make up a set put up for retail sale for purposes of GRI 3(b). That is, they are, *prima facie*, classifiable in different headings (see above), they are put together to meet a particular need or carry out a specific activity (that of setting the drop in anchors so the anchors can perform their intended function), and they are put up in a manner suitable for sale directly to users without repacking. Pursuant to GRI 3(b), classification of the set is determined on the basis of the component that imparts the essential character to the whole. EN Rule 3(b)(VII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of the constituent materials or components in relation to the use of the goods.

Recently, there have been several decisions on "essential character" for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F. 3rd 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), affirmed, 171 F.3d 1370 (Fed. Cir. 1999).

Based on the foregoing, we conclude that in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors in EN Rule 3(b)(VII) should also be considered, as applicable. In this case, the "indispensable function" (*Better Home Plastics*, *supra*) of the drop-in anchors is to "hold" or "hang" another article. Clearly, the drop-in anchors perform this function, with the setting tool performing the subsidiary function of securing the anchors. Accordingly, we conclude that the drop-in anchors impart the essential character of the set. When packaged for retail sale and imported as a set, the classification of the set would be under subheading 7318.19.00 for the steel anchors in NY A89247 and under subheading 7907.00.60, HTSUS, for the zinc alloy anchors in NY A89248.

The determination that the base metal setting tools are classifiable under heading 8205, HTSUS, comports with prior rulings of this office. In New York Ruling Letter (NY) D88844, dated March 10, 1999, a similar setting tool was classified under subheading 8205.59.55, HTSUS, which provides for other hand tools.

Holding:

The base metal hand tools for setting drop-in anchors are classifiable as follows:

If imported separately from any other article, the base metal hand tools are classifiable under subheading 8205.59.5560, HTSUS, which provides for other handtools not elsewhere specified or included, other.

If imported with the respective fasteners, it is our determination that, in accordance with GRI 3, the articles will be considered to be ancillary to the fasteners (which impart the essential character to the importation) and classified with the fasteners.

Effect on Other Rulings:

NY A89247 and A89248 are hereby MODIFIED, only as they apply to the classification of the setting tools.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A PORCELAIN DEMITASSE (CUP) AND SAUCER SET

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of a ruling letter and treatment relating to tariff classification of a porcelain demitasse (cup) and saucer set.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of a porcelain demitasse (cup) and saucer set under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on February 28, 2001, in Volume 35, Number 9, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch, (202) 927–1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended,

and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke NY G83712 dated November 17, 2000 and to revoke any treatment accorded to substantially identical merchandise was published in the February 28, 2001, CUSTOMS BULLETIN, Volume 35, Number 9. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY G83712 dated November 17, 2000, Customs classified a porcelain demitasse (cup) and saucer set under subheading 6911.10.80, HTSUS, which provides for: Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: * * * Other.

Since the issuance of this ruling, Customs has received additional information regarding the merchandise and has determined that the original classification is in error. The subsequent information described the merchandise as ornamental which fall under subheading 6913.10.50, HTSUS, which provides for: Statuettes and other ornamental ceramic articles: Of porcelain or china: Other: Other.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY G83712 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964805, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: April 10, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 10, 2001

CLA–2 RR:CR:GC 964805 nel/JGB
Category: Classification
Tariff No. 6913.10.50

MR. FLOYD SIRICO
ROGERS & BROWN CUSTOM BROKERS, INC.
P. O. Box 20160
Charleston, SC 29413–0160

Re: NY G83712 revoked; porcelain demitasse (cup) and saucer set.

DEAR MR. SIRICO:

This is in reference to your letter of December 13, 2000, to Customs National Commodity Specialist Division, on behalf of Gordon International Services, Inc., concerning the classification of a decorative teacup and saucer under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter was referred to this office for reply.

In preparing our response, we have reviewed the decision in NY G83712 issued to you on November 17, 2000, in which the subject porcelain demitasse and saucer set was classified as tableware under subheading 6911.10.80, HTSUS. The information you supplied by letter dated December 13, 2000, significantly changed the facts on which ruling NY G83712 was based. Therefore, the classification of the merchandise provided in NY G83712 no longer reflects the view of Customs.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on

February 28, 2001, in Vol. 35, No. 9 of the CUSTOMS BULLETIN, proposing to revoke NY G83712 and to revoke the treatment pertaining to a porcelain demitasse (cup) and saucer set. No comments were received in response to the notice.

Facts:

The merchandise is described in NY G83712 as a porcelain demitasse and saucer set, with the demitasse measuring approximately 2 ¼" across its open top diameter and the saucer measuring about 4 ¼" in diameter. The demitasse has an elegantly designed looped handle. The exterior of the set depicts a green colored design, bordered with gold-colored bands. The set is stated to be valued at $2.80 per dozen.

You claimed the merchandise was an ornamental cup and saucer. Customs, based on the information you originally provided, found the merchandise to possess a decorative surface but principally designed for use as a utilitarian demitasse and saucer, which was classifiable as tableware or kitchenware under subheading 6911.10.80, HTSUS.

Your letter of December 13, 2000, provided the following additional information:

(1) The lead content of the paint on these teacups are (sic) too high to be approved by FDA.

(2) All these cups are clearly marked NOT FOR FOOD USE and are marketed as candleholders.

(3) Their only method of marketing this product is strictly for decorative use, because they are not FDA approved and cannot be marketed as tableware.

This information affects the utilitarian nature of the demitasse and saucer at issue.

A sample of the merchandise was not provided to us with the request for reconsideration.

Issue:

Whether the subject porcelain demitasse (cup) and saucer set is properly classifiable as porcelain tableware or kitchenware under subheading 6911.10, HTSUS, or as an ornamental ceramic article under subheading 6913.10, HTSUS.

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the HTSUS, the Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, may be used. The ENs, although not dispositive or legally binding, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The HTSUS subheadings under consideration for the classification of the porcelain demitasse and saucer set are as follows:

6911.10:	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware.
6913.10:	Statuettes and other ornamental ceramic articles: Of porcelain or china.

Decorated tableware and other domestic articles which serve a useful purpose no less efficiently than their plainer counterparts, are classified in heading 6911 or 6912, HTSUS, rather than in heading 6913, HTSUS. See EN 69.13(B).

Heading 6913, HTSUS, covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices, assembly rooms, churches, etc., and outdoor ornaments. See EN 69.13. This heading covers articles, which have no utility value but are wholly ornamental, as well as articles whose only usefulness is to support or contain other decorative articles or to add to their decorative effect. EN 69.13(A).

Additionally, heading 6913, HTSUS, covers tableware and other domestic articles only if the usefulness of the articles is clearly subordinate to their ornamental character. In general, tableware and domestic utensils are designed essentially to serve useful purposes, and any decoration is usually secondary so as not to impair the usefulness. See EN 69.13(B). Congress intended for "tableware" to provide for only such articles as are chiefly used upon a table for the service of meals, and that term was not intended to cover novelty articles. See *United States v. The Baltimore & Ohio R.R. Co.*, 47 C.C.P.A. 1, 3 (1959) (B&O).

The instant demitasse cup and saucer, similar to cups and saucers in issue in B&O, are not used chiefly for serving coffee or other liquids, but their chief use is for display as ornaments. Merely because one can drink from the cups and saucers does not establish the chief use thereof. B&O at 5. The B&O court held that certain demitasse cups and saucers of comparatively small size, sold at a low price, and used chiefly for display as ornaments, were classifiable, not as tableware, but as ornamental articles.

Indeed, it is the decoration of the instant demitasse and saucer set that impairs its utilitarian value. Based on the information provided, the paint used to decorate the cup, marked NOT FOR FOOD USE, has a sufficient quantity of lead to prohibit its sale as tableware. As such, it is unfit for the purpose of holding a beverage for human consumption. Therefore, the decorated demitasse and saucer set has no useful purpose as a cup and saucer of "tableware" and may be considered primarily ornamental.

It must be noted that not all demitasse cups and saucers should be considered "ornamental." Similar demitasse cups and saucers brought in chiefly for drinking rather than exhibiting would be described as "tableware." See B&O 7–8, in which the court made clear that this was not a ruling that all demitasse cups are outside the category of "tableware."

The instant demitasse cup and saucer set, marked "NOT FOR FOOD USE," marketed as a candleholder, has no utility value as a cup and saucer and does not belong to the class of articles which is chiefly used upon the table for the service of meals, therefore, it cannot be classified as tableware under subheading 6911.10.80, HTSUS. The instant set is wholly ornamental and as such belongs to the class of novelty articles, chiefly used for display or decoration, under subheading 6913.10.50, HTSUS.

Holding:

The porcelain demitasse (cup) and saucer set is classifiable as an ornamental article under subheading 6913.10.50, HTSUS, which provides for: Statuettes and other ornamental ceramic articles: Of porcelain or china: Other: Other.

Effect on Other Rulings:

NY G83712 dated November 17, 2000, is hereby REVOKED.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN ACRYLIC POLYMER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of an acrylic polymer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of an acrylic polymer under the Harmonized Tariff Schedule of the United States (HTSUS). Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed modification was published on February 28, 2001, in Volume 35, Number 9, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch, (202) 927–1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke NY F88342 dated June 30, 2000, and to revoke any treatment accorded to substantially identical merchandise was published February 28, 2001 in the CUSTOMS BULLETIN, Volume 35, Number 9. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party, who has received an interpretative ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions

or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY F88342 dated June 30, 2000, and any other ruling not specifically identified, in order to reflect the proper classification of certain acrylic polymers pursuant to the analysis set forth in proposed HQ 964704, set forth as the attachment to this document.

In NY F88342 Customs classified an acrylic polymer, identified as Noxtite PA–402 (CAS #67254–76–6), which was described as an ACM (acrylic acid ester rubber) polymer for use in the manufacture of automotive oil seals, under subheading 3906.90.2000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Other: Plastics. Since the issuance of this ruling, Customs has tested additional samples of the merchandise and has determined that the classification is in error. The subsequent samples met the requirements for elastomers in Chapter 39, Additional U.S. Note 1, and are classifiable under subheading 3906.90.1000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Elastomeric.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruing will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: April 11, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 11, 2001.

CLA–2 RR:CR:GC 964704 nel/JGB
Category: Classification
Tariff No. 3906.90.1000

MS. KIMBERLY M. NOVAK
CUSTOMS COMPLIANCE ANALYST
EMERY CUSTOMS BROKERS
6940A Engle Road
Middleburg Heights, OH 44130

Re: Reconsideration of NY F88342; Noxtite PA–402 acrylic polymer.

DEAR MS. NOVAK:

This is in response to your letters of October 24 and November 27, 2000, to the Customs National Commodity Specialist Division, on behalf of Freudenberg-NOK concerning the classification of Noxtite PA–402, under the Harmonized Tariff Schedule of the United States (HTSUS). Your letters were referred to this office for reply.

In preparing our response, we have reviewed the decision in NY F88342 dated June 30, 2000, in which Noxtite PA–402 was classified as an acrylic plastic in primary form under subheading 3906.90.2000, HTSUS. The information you supplied by letter dated November 27, 2000, changed the facts on which ruling NY F88342 was based. Therefore, we are changing the classification of the merchandise and revoking NY F88342.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on February 28, 2001, in Vol. 35, No. 9 of the CUSTOMS BULLETIN, proposing to revoke NY F88342 and to revoke the treatment pertaining to Noxtite PA–402 acrylic polymer. No comments were received in response to the notice.

Facts:

The merchandise is described as Noxtite PA–402, an acrylic polymer. The product is a copolymer consisting of several acrylic monomers with a high proportion of carbon fillers.

You claimed classification in subheading 4002.99.0000, HTSUS, which provides for: Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip: Other: Other.

The dumbbell-shaped samples submitted for NY F88342 failed to meet the test for compliance with the vulcanization, elongation, and recovery criteria for synthetic rubber in Chapter 40 note 4(a), HTSUS, due to a high content of carbon reinforcing pigment, which made these samples brittle. Customs classified the merchandise in subheading 3906.90.2000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Other: Plastics.

Subsequent dumbbell-shaped samples met Chapter 40 note 4(a), HTSUS, requirements due to a lower carbon content as evidenced by the vulcanizing recipe and test results.

Issue:

Is Noxtite PA–402 classifiable as plastic under Chapter 39, HTSUS, or as rubber under Chapter 40, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. The majority of imported goods are classified by application of GRI 1; that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, then the remaining GRIs may be applied.

The following headings and legal notes are relevant to the classification of Noxtite PA–402, acrylic polymer:

Heading 3906, HTSUS, provides for: Acrylic polymers in primary forms.

Chapter 39 Note 3 states that: Headings 3901 to 3911 apply only to goods of a kind produced by chemical synthesis, falling in the following categories: * * * (c) Other synthetic polymers with an average of at least five monomer units.

Chapter 39 Note 4 states that: The expression "copolymers" covers all polymers in which no single monomer contributes 95 percent or more by weight to the total polymer content.

Chapter 39, Additional U.S. Note 1 states that: For the purposes of this chapter, the term "elastomeric" means a plastic material which after cross-linking can be stretched at 20°C to at least three times its original length and that, after having been stretched to twice its original length and the stress removed, returns within five minutes to less than 150 percent of its original length. Elastomeric plastics may also contain fillers, extenders, pigments or rubber-processing chemicals, whether or not such plastics material, after the addition of such fillers, extenders, pigments or chemicals, can meet the tests specified in the first part of this note.

Heading 4002, HTSUS, provides for: Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip.

Chapter 40 Note 4 states that in heading 4002: "Synthetic rubber" applies to: (a) Unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-thermoplastic substances which, at a temperature between 18°C and 29°C, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of 5 minutes, to a length not greater than 1-1/2 times their original length. For the purposes of this test, substances necessary for the cross-linking, such as vulcanizing activators or accelerators, may be added; the presence of substances as provided for by note 5(b)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticizers and fillers, is not permitted; * * *

Chapter 40 Note 5 (a) states that: Heading 4002 does not apply to any rubber or mixture of rubbers which has been compounded, before or after coagulation, with: (i) Vulcanizing agents, accelerators, retarders or activators (other than those added for the preparation of prevulcanized rubber latex); (ii) Pigments or other coloring matter other than those added solely for the purpose of identification; (iii) Plasticizers or extenders (except mineral oil in the case of oil-extended rubber), fillers, reinforcing agents, organic solvents or any other substances, except those permitted under (b).

Noxtite PA–402 is a copolymer consisting of several acrylic monomers with a high proportion of carbon fillers. As such, it is excluded from heading 4002, HTSUS, by Chapter 40 Note 5(a), quoted above.

The original dumbbell-shaped samples of Noxtite PA–402, submitted for NY F88342 dated June 30, 2000, did not meet the "synthetic rubber" requirements of chapter 40 note 4(a). Nor did they meet the "elastomeric" requirements of chapter 39, additional U.S. note 1, and accordingly were classified as an acrylic plastic under subheading 3906.90.2000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Other: Plastics.

The dumbbell-shaped samples of Noxtite PA–402, submitted subsequently, met the test for compliance with the stretch and return criteria for elastomers in Chapter 39, Additional U.S. Note 1, which also provides that elastomeric materials may contain fillers, whether or not such materials, after addition of such fillers, can met the elongation and recovery test. Based on these test results, Noxtite PA–402 is an acrylic polymer that falls under subheading 3906.90.1000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Elastomeric.

Holding:

Noxtite PA–402 acrylic polymer is classified under subheading 3906.90.1000, HTSUS, which provides for: Acrylic polymers in primary forms: Other: Elastomeric.

Effect on Other Rulings:

NY F88342 dated June 30, 2000, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF TRAVEL DOCUMENT HOLDERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letters and revocation of treatment relating to tariff classification of certain travel document holders.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking nine ruling letters pertaining to the tariff classification of travel document holders under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published February 28, 2001, in Volume 35, Number 9, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch, (202) 927–2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke Headquarters Ruling Letter (HQ) 961827, dated April 5, 1999, New York

Ruling Letter (NY), A86873, dated September 13, 1996, Port Decision (PD) A81013, dated March 26, 1996, PD A81014, dated March 26, 1996, PD A81015, dated March 26, 1996: PD A81016 dated March 26, 1996, PD A88536, dated October 24, 1996, PD B84557, dated May 19, 1997, and PD B84558, dated May 19, 1997, and to revoke any treatment accorded to substantially identical merchandise was published in the February 28, 2001, CUSTOMS BULLETIN, Volume 35, Number 9. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In HQ 961827, PD B84557 and PD B84558 Customs classified certain travel document holders that were designed to hold and carry documents used for travel such as tickets, credit cards, receipts, etc., under subheading 4202.92.45, HTSUSA. In NY A86873, PD A81013, PD A81014, PD A81015, PD A81016, and PD A88536, Customs classified certain travel document holders that were designed to hold and carry documents used for travel such as tickets, credit cards, receipts, etc., under subheading 4202.32, HTSUSA .

It is now Customs position that the travel document holders that were designed to hold and carry documents used for travel such as tickets, credit cards, receipts, etc., are classified under subheading 4202.92.9060, HTSUSA, which provides for: "Trunks, suitcases, vanity cases, * * *: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 961827, NY A86873, PD A81013, PD A81014, PD A81015, PD A81016, PD A88536, PD B84557, and PD B84558 and any other ruling not specifically identified in order to reflect the proper classification of the mer-

chandise pursuant to the analysis set forth in Headquarters Ruling Letters HQ 963320, HQ 964788, HQ 964789, and HQ 964790, set forth as attachments "A" "B" "C" and "D", respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: April 6, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 6, 2001.

CLA–2:RR:CR:TE 963320 JFS
Category: Classification
Tariff No. 4202.92.9060

MS. PAULA M. CONNELLY
MIDDLETON & SHRULL
44 Mall Road, Suite 208
Burlington, MA 01803–4530

Re: Revocation of HQ 961827, dated April 5, 1999; Travel Document Holder.

DEAR MS. CONNELLY:

This letter is to inform you that Customs has reconsidered Headquarters Ruling Letter (HQ) 961827, issued to you on April 5, 1999, on behalf of the GEM Group, Inc., concerning the classification of a document holder under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, it has been determined that the classification of the document holder in subheading 4202.92.4500, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes HQ 961827.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of HQ 961827 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. As explained in the notice, the period within which to submit comments on this proposal was until March 30, 2001. No comments were received in response to this notice.

Facts:

HQ 961827 affirmed Port Ruling Letter (PD) C84151, issued February 26, 1998. In PD C84151, Customs classified the document holder at issue in heading 4202, HTSUSA, which covers, among other things, trunks, cases, bags and various containers. At the eight digit level, the document holder was classified under subheading 4202.92.4500, HTSUSA, as a "travel, sports and similar" bag.

The document holder that is the subject of this ruling was described in HQ 961827 as follows:

> The article at issue, described in PD C84151 as a "travel document case," and identified by style number 8400, is described in advertising/marketing literature as a "Docu-

ment Holder." The article consists of a jacket or case which is zippered on 3 sides and which measures approximately 10¼ inches in height by 5¼ inches in width by 1 inch in depth (in the closed position). The case is black in color and has an outer layer composed of a woven textile fabric that has been coated, covered, or laminated with a cellular plastic identified as polyurethane (PU). The plastic surface of the layer faces outward. There is a flat, open, full-height pocket on the article's exterior front and a wrist strap attached to the zipper pull. Plastic foam and paperboard are sealed between the outer and inner surfaces of the article.

The interior surfaces of the case are also constructed of fabric-backed PU plastic. The case has a flat, open-top pocket which extends the full height and width of the case. Overlying that pocket, on the right interior side, are two flat, full-height pockets (one on top of the other). One of these pockets has a zippered closure while the other is sleeve-like and open on the left. The interior left side of the case features two flat, full-height pockets (again, one on top of the other and both stacked over the largest pocket noted above). Attached on top of these pockets are eight slots for business or credit cards and one flat pocket with a transparent plastic window for an identification card. There also is a pen holder attached to the spine of the case. The article is imported without contents.

Issue:

Whether the travel document holder should be classified under subheading 4202.92.4500, HTSUSA, as a travel or similar bag?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System, Explanatory Notes (EN), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, provides:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Additionally, the EN to heading 4202, HTSUSA, state that the heading only covers the specifically named containers and similar containers. Applying the principle of statutory construction known as *ejusdem generis*, which means "of the same kind," Customs finds that the instant travel document holder is covered by the term "similar containers" contained in the heading.

Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). The Court of International Trade's determination that the "essential characteristics and purpose of heading 4202 exemplars are * * * to organize, store, protect and carry various items[,]" was affirmed by the Court of Appeals for the Federal Circuit. *Totes, Inc. v. United States*, 69 F.3d 495, 498 (1995). Applying the rationale set forth in *Totes*, Customs finds that the instant travel document holder serves the purposes of orga-

nizing, storing, protecting and carrying the various documents that are typically carried during travel. Accordingly, the document holder is classifiable under heading 4202, HTSUSA, as a "similar container."

With respect to classification at the subheading level, the article was originally classified under subheading 4202.92.4500, HTSUSA, as a travel or similar bag. The instant document holder has some of the same characteristics as a travel bag, e.g., organizing, storing, protecting, and carrying a person's documents while traveling. However, application of Additional U.S. Note 1 to Chapter 42, HTSUSA, removes the document holder from the subheading for travel and similar bags. The Additional U.S. Notes become applicable at the eight-digit level or U.S. subdivision of the international subheadings. The provision for travel and similar bags is defined by Additional U.S. Note 1, Chapter 42, HTSUSA, as follows:

> For the purposes of heading 4202, the expression *"travel, sports and similar bags"* means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

The Additional U.S. Note clarifies what characteristics will be considered to determine if a bag is a travel or similar bag. Significantly it lists travel and similar bags as bags that are designed for carrying clothing and personal effects. In order to hold and carry clothing and personal effects, a bag must have a generic or general carrying capacity. The exemplars, backpacks and shopping bags, in the Additional U.S. Note, both have a general or generic carrying capacity suitable for holding clothing and personal effects. Because the document holder does not have a generic carrying capacity, it does not meet the definition of travel and similar bags in Additional U.S. Note 1, Chapter 42, HTSUSA.

In HQ 954298, dated October 27, 1993, Customs considered three pouches. The first pouch was described as a travel pouch and measured 6″ by 9″, had one main compartment with two pockets on the front, and attached to a person's belt. The second pouch also attached to a person's belt, but it was shaped to hold and carry a hand weapon or pistol. The third pouch was designed to hold and carry an ammunition clip and it too attached to a person's belt.

The travel pouch was deemed to be classifiable as a travel, sports and similar bag because of its ability to carry personal items. However, the weapon and clip pouches were excluded from classification as travel, sports and similar bags because they were similar to those bags excluded by U.S. Additional Note 1 to Chapter 42.

HQ 954298 provides guidance as to the proper classification of the document holder that is the subject of this ruling. The pouch that had the generic or general carrying capacity was the only pouch that was classified as a travel, sports and similar bag. The two other pouches, which were somewhat specially fitted and had no generic carrying capacity, were excluded from the provision for travel, sports and similar bags. The document holder, due to (1) its lack of general or generic carrying capacity and (2) the fact that it is partially fitted, is more similar to the weapon and clip pouch, than it is to the travel pouch. See also HQ 954288, dated October 27, 1993.

Similarly, the document holder has characteristics and functions that are similar to other fitted or compartmentalized cases such as trucker's wallets, camera tripod cases, palmtop pocket cases, and compact disk (CD) carrying cases.[1] Like the document holder, these cases are somewhat fitted to carry, protect, and organize a general class of goods. They, like the document holder, do not have a generic or general carrying capacity. See, HQ 084931, dated August 14, 1989 (trucker's wallet classified in subheading 4202.99.0000, HTSUSA, as "Other"); HQ 087113, dated July 26, 1990 (carrying case for scope, tripod and photo adapter eyepiece classified in subheading 4202.92.9000, HTSUSA, as "Other"); HQ 962341, dated November 23, 1998 ("Palmtop Pocket Case" classified in subheading 4202.92.9026, HTSUSA, as "Other"). HQ 960527, dated April 11, 2000 (CD-ROM storage folios classified in subheading 4202.92.9026, HTSUSA, as "Other"); HQ 960983, dated September 25, 1998 (diskette storage case classified in subheading 4202.99.9000, HTSUSA, as "Other"); HQ 953175, dated February 17, 1993 (compact disc holder classified in subheading 4202.92.9020, HTSUSA, as "Other").

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[1] In 1997, the HTSUSA was modified by adding subheading 4202.92.9050, HTSUS, "Cases designed to protect and transport compact disks (CD's), CD ROM disks, CD players, cassette players and/or cassettes."

There are several other potential subheadings under which the document holder could possibly be classified. The document holder serves to organize and protect flat items, and has many of the same characteristics as the attache cases and briefcases that are covered in subheadings 4202.11, HTSUSA, through 4202.19, HTSUSA. However, the document holder is not designed to store protect, and carry items such as newspapers, small umbrellas, and/or other objects normally carried in an attache case or briefcase. See, HQ 962757, dated June 21, 2000; and HQ 962030, dated May 13, 1999.

Additionally, the document holder is not classifiable as "articles of a kind normally carried in the pocket or in the handbag," subheadings 4202.31, HTSUSA, through 4202.39, HTSUSA. Its large size, approximately 10¼ inches in height by 5–1/4 inches in width by 1 inch in depth (in the closed position), renders it too large to fit into a pocket or handbag. The wrist strap also indicates that the case is to be carried in the hand as opposed to in a purse or pocket.

For a similar ruling, see HQs 964788, 964789, and 964790 of this date.

Holding:

Accordingly, for the reasons stated above, Customs finds that the document holder is classified under subheading 4202.92.9060, HTSUSA, as "Trunks, suitcases, vanity cases, * * *: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: Other: Other." The duty, at the general one column rate, is 18.3 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

Effect on Other Rulings:

HQ 961827, dated April 5, 1999, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 6, 2001.

CLA-2:RR:CR:TE 964788 JFS
Category: Classification
Tariff No. 4202.92.9060

MS. MARIA GALLEGO-TAVERAS
PATRICK POWERS CUSTOM BROKERS, INC.
27 Blake Ave.
Lynbrook, NY 11563

Re: Revocation of: NY A86873, dated September 13, 1996; PD A81013, dated March 26, 1996; PD A81014, dated March 26, 1996; PD A81015, dated March 26; and PD A81016 dated March 26, 1996. Travel Document Holders.

DEAR MS. GALLEGO-TAVERAS:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) A86873, dated September 13, 1996, Port Decision (PD) A81013, dated March 26, 1996; PD A81014, dated March 26, 1996; PD A81015, dated March 26, 1996; and PD A81016 dated March 26, 1996. These rulings were issued to you on behalf of Fashioncraft-Excello, concerning the classification of document holders under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of these rulings, it has been determined that the classification of the document holders in subheading 4202.32, HTSUSA,

was incorrect. For the reasons that follow, this ruling revokes NY A86873, PD A81013, PD A81014, PD A81015, and PD A81016.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY A86873, PD A81013, PD A81014, PD A81015, and PD A81016, was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. As explained in the notice, the period within which to submit comments on this proposal was until March 30, 2001. No comments were received in response to this notice.

Facts:

In NY A86873, style #4451 was under consideration. The document holder was an unlined polyvinyl chloride (PVC) document case designed to hold tickets and a passport during travel. We assume the document holder was approximately 9 ½ inches by 4 ½ inches in the closed position.

In PD A81013, style #6650 was under consideration. The document holder was a ticket/passport case for use during travel. It was approximately 9 inches by 4¼ inches closed, had an outer surface of PVC, and was unlined.

In PD A81014, style #3360 was under consideration. The document holder was a ticket/passport case for use during travel. It was approximately 10 inches by 5 inches closed, had an outer surface of textile backed PVC, and was unlined.

In PD A81015, style #4451 was under consideration. The document holder was a ticket/passport case for use during travel. We assume it was approximately 9 ½ inches by 4½ inches closed. The outer surface was composed of PVC, and the case was unlined.

In PD A81016, style #3325 was under consideration. The document holder was described as a document case for use during travel. It was approximately 11 inches by 5 inches closed, had an outer surface of textile backed PVC, and was unlined.

Issue:

Whether the travel document holders should be classified under subheading 4202.32, HTSUSA, which provides for articles of a kind normally carried in the pocket or in the handbag?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, provides:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Additionally, the EN to heading 4202, HTSUSA, state that the heading only covers the specifically named containers and similar containers. Applying the principle of statutory construction known as *ejusdem generis*, which means "of the same kind," Customs finds that the instant travel document holder is covered by the term "similar containers" contained in the heading.

Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same

kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). The Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are * * * to organize, store, protect and carry various items[,]" was affirmed by the Court of Appeals for the Federal Circuit. *Totes, Inc. v. United States*, 69 F.3d 495, 498 (1995). Applying the rationale set forth in *Totes*, Customs finds that the instant travel document holders serve the purposes of organizing, storing, protecting and carrying the various documents that are typically carried during travel. Accordingly, the document holders are classifiable under heading 4202, HTSUSA, as a "similar container."

With respect to classification at the subheading level, the articles were originally classified under subheading 4202.32, HTSUSA, covering articles of a kind normally carried in the pocket or in the handbag. The EN to subheading 4202.32, HTSUSA, state that the subheading covers "articles of a kind normally carried in the pocket or in the handbag and include spectacle cases, note-cases (bill-folds), wallets, purses, keycases, cigarette-cases, cigar-cases, pipe-cases and tobacco-pouches." Document holders are not provided for in the EN.

On June 21, 1995, this office published a General Notice in the CUSTOMS BULLETIN, Volume 29, Number 25, concerning goods identified as "Wallets on a String." The attributes of articles of a kind normally carried in the pocket or in the handbag were discussed. The notice stated in pertinent part:

> Such articles include wallets, which may be described as flat cases or containers fitted to hold credit/identification cards, paper currency, coins and in some instances a checkbook holder. Articles meeting this description which also possess a detachable carrying strap have been classified as flatgoods.
>
> In order to be classified as a flatgood, the article must fit comfortably in a handbag or pocket. For example, rectangular or square cases measuring approximately 7½ inches by 4½ inches, or 4¾ inches by 4½ inches, in their closed position, have been classified as flatgoods.

While having similar features as the flatgoods described in the notice, the document holders under consideration are large enough that they cannot be comfortably carried in the pocket or in the handbag. Even the smallest document holder that is approximately 9 inches by 4 inches by 1 inch in the closed position, is too large to qualify as a flatgood. Accordingly the document holders do not qualify as flat goods carried in the pocket or in the handbag.

Another potential subheading in which to classify the document holders is subheading 4202.92.4500, HTSUSA, which provides for "travel, sports and similar" bags. The instant document holders have some of the same characteristics as a travel bag, e.g., organizing, storing, protecting, and carrying a person's documents while traveling. However, application of Additional U.S. Note 1 to Chapter 42, HTSUSA, removes the document holders from the subheading for travel and similar bags. The Additional U.S. Notes become applicable at the eight-digit level or U.S. subdivision of the international subheadings. Travel, sports and similar bags are defined as:

> For the purposes of heading 4202, the expression *"travel, sports and similar bags"* means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

Additional U.S. Note 1, Chapter 42, HTSUSA.

The exemplars, backpacks and shopping bags, both have a general or generic carrying capacity suitable for holding clothing and personal effects. Because the document holders do not have a generic carrying capacity, they do not meet the definition of travel and similar bags as provided in Additional U.S. Note 1, Chapter 42, HTSUSA.

The lack of ability to carry three dimensional items also prevents the document holders from being classified as briefcases or attache cases covered in subheadings 4202.11, HTSUSA, through 4202.19, HTSUSA. Although the document holders organize and protect flat items, and have many of the same characteristics as attache cases and briefcases, they are not designed to carry items such as newspapers, small umbrellas, and/or other objects nor-

mally carried in an attache case or briefcase. See, HQ 962757, dated June 21, 2000; and HQ 962030, dated May 13, 1999.

The document holders have characteristics and functions that are similar to other fitted or compartmentalized cases that have been classified in the "other" provision of subheading 4202, HTSUSA. These cases include trucker's wallets, camera tripod cases, palmtop pocket cases, and compact disk (CD) carrying cases.[1] Like the document holders, these cases (1) are not designed to fit in the pocket or handbag, (2) are somewhat fitted to carry, protect, and organize a general class of goods, and (3) have no generic or general carrying capacity. See, HQ 084931, dated August 14, 1989 (trucker's wallet classified in subheading 4202.99.0000, HTSUSA, as "Other"); HQ 087113, dated July 26, 1990 (carrying case for scope, tripod and photo adapter eyepiece classified in subheading 4202.92.9000, HTSUSA, as "Other"); HQ 962341, dated November 23, 1998 ("Palmtop Pocket Case" classified in subheading 4202.92.9026, HTSUSA, as "Other"). HQ 960527, dated April 11, 2000 (CD-ROM storage folios classified in subheading 4202.92.9026, HTSUSA, as "Other"); HQ 960983, dated September 25, 1998 (diskette storage case classified in subheading 4202.99.9000, HTSUSA, as "Other"); HQ 953175, dated February 17, 1993 (compact disc holder classified in subheading 4202.92.9020, HTSUSA, as "Other").

For a similar ruling, see HQs 963320, 964789, and 964790 of this date.

Holding:

Accordingly, for the reasons stated above, Customs finds that the document holders are classified under subheading 4202.92.9060, HTSUSA, as "Trunks, suitcases, vanity cases, * * *: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: Other: Other." The duty, at the general one column rate, is 18.3 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

Effect on Other Rulings:

NY A86873, dated September 13, 1996, PD A81013, dated March 26, 1996; PD A81014, dated March 26, 1996; PD A81015, dated March 26, 1996; and PD A81016, dated March 26, 1996 are hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

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[1] In 1997, the HTSUSA was modified by adding 4202.92.9050, HTSUS, "Cases designed to protect and transport compact disks (CD's), CD ROM disks, CD players, cassette players

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 6, 2001.

CLA–2:RR:CR:TE 964789 JFS
Category: Classification
Tariff No. 4202.92.9060

MS. MARIA GALLEGO-TAVERAS
PATRICK POWERS CUSTOM BROKERS, INC.
27 Blake Ave.
Lynbrook, NY 11563

Re: Revocation of PD A88536; Classification of Travel Document Holder.

DEAR MS. GALLEGO-TAVERAS:

This letter is to inform you that Customs has reconsidered Port Decision (PD) A88536, dated October 24, 1996, issued to you on behalf of Customcraft, Inc., concerning the classification of a document holder under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of the ruling, it has been determined that the classification of the document holder in subheading 4202.32, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes PD A88536.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of PD A88536 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. As explained in the notice, the period within which to submit comments on this proposal was until March 30, 2001. No comments were received in response to this notice.

Facts:

The article under consideration is style #4451. The article is a ticket/passport case for use during travel. It is approximately 9½ inches by 4½ inches closed, and has an outer surface of polyvinyl chloride (PVC) sheeting with a textile backing.

Issue:

Whether the travel document holder should be classified under subheading 4202.32, HTSUSA, which provides for articles of a kind normally carried in the pocket or in the handbag?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, provides:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Additionally, the EN to heading 4202, HTSUSA, state that the heading only covers the specifically named containers and similar containers. Applying the principle of statutory construction known as *ejusdem generis*, which means "of the same kind," Customs finds that the instant travel document holder is covered by the term "similar containers" contained in the heading.

Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). The Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are * * * to organize, store, protect and carry various items[,]" was affirmed by the Court of Appeals for the Federal Circuit. *Totes, Inc. v. United States*, 69 F.3d 495, 498 (1995). Applying the rationale set forth in *Totes*, Customs finds that the instant travel document holder serves the purposes of organizing, storing, protecting and carrying the various documents that are typically carried during travel. Accordingly, the document holder is classifiable under heading 4202, HTSUSA, as a "similar container."

With respect to classification at the subheading level, the article was originally classified under subheading 4202.32, HTSUSA, covering articles of a kind normally carried in the pocket or in the handbag. The EN to subheading 4202.32, HTSUSA, state that the subheading covers "articles of a kind normally carried in the pocket or in the handbag and include spectacle cases, note-cases (bill-folds), wallets, purses, keycases, cigarette-cases, cigar-cases, pipe-cases and tobacco-pouches." Document holders are not provided for in the EN.

On June 21, 1995, this office published a General Notice in the CUSTOMS BULLETIN, Volume 29, Number 25, concerning goods identified as "Wallets on a String." The attributes of articles of a kind normally carried in the pocket or in the handbag were discussed. The notice stated in pertinent part:

> Such articles include wallets, which may be described as flat cases or containers fitted to hold credit/identification cards, paper currency, coins and in some instances a checkbook holder. Articles meeting this description which also possess a detachable carrying strap have been classified as flatgoods.
>
> In order to be classified as a flatgood, the article must fit comfortably in a handbag or pocket. For example, rectangular or square cases measuring approximately 7½ inches by 4½ inches, or 4¾ inches by 4½ inches, in their closed position, have been classified as flatgoods.

While having similar features as the flatgoods described in the notice, the document holder under consideration is too large to qualify as a flatgood and cannot comfortably be carried in the pocket or in the handbag. Accordingly the document holder does not qualify as a flat good carried in the pocket or in the handbag.

Another potential subheading in which to classify the document holder is subheading 4202.92.4500, HTSUSA, which provides for "travel, sports and similar" bags. The instant document holder has some of the same characteristics as a travel bag, e.g., organizing, storing, protecting, and carrying a person's documents while traveling. However, application of Additional U.S. Note 1 to Chapter 42, HTSUSA, removes the document holder from the subheading for travel and similar bags. The Additional U.S. Notes become applicable at the eight-digit level or U.S. subdivision of the international subheadings. Travel, sports and similar bags are defined as:

> For the purposes of heading 4202, the expression *"travel, sports and similar bags"* means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases bottle cases and similar containers.

Additional U.S. Note 1, Chapter 42, HTSUSA.

The exemplars, backpacks and shopping bags, in the Additional U.S. Note, both have a general or generic carrying capacity suitable for holding clothing and personal effects. Because the document holder does not have a generic carrying capacity, it does not meet the

definition of travel, sports and similar bags as provided in Additional U.S. Note 1, Chapter 42, HTSUSA.

The lack of ability to carry three dimensional items also prevents the document holder from being classified as a briefcase or attache case covered in subheadings 4202.11, HTSUSA, through 4202.19, HTSUSA. Although the document holder organizes and protects flat items, and has many of the same characteristics as attache cases and briefcases, it is not designed to carry items such as newspapers, small umbrellas, and/or other objects normally carried in an attache case or briefcase. See, HQ 962757, dated June 21, 2000; and HQ 962030, dated May 13, 1999.

The document holder has characteristics and functions that are similar to other fitted or compartmentalized cases that have been classified in the "other" provision of subheading 4202, HTSUSA. These cases include trucker's wallets, camera tripod cases, palmtop pocket cases, and compact disk (CD) carrying cases.[1] Like the instant document holder, these cases (1) are not designed to fit in the pocket or handbag, (2) are somewhat fitted to carry, protect, and organize a general class of goods, and (3) have no generic or general carrying capacity. See, HQ 084931, dated August 14, 1989 (trucker's wallet classified in subheading 4202.99.0000, HTSUSA, as "Other"); HQ 087113, dated July 26, 1990 (carrying case for scope, tripod and photo adapter eyepiece classified in subheading 4202.92.9000, HTSUSA, as "Other"); HQ 962341, dated November 23, 1998 ("Palmtop Pocket Case" classified in subheading 4202.92.9026, HTSUSA, as "Other"). HQ 960527, dated April 11, 2000 (CD-ROM storage folios classified in subheading 4202.92.9026, HTSUSA, as "Other"); HQ 960983, dated September 25, 1998 (diskette storage case classified in subheading 4202.99.9000, HTSUSA, as "Other"); HQ 953175, dated February 17, 1993 (compact disc holder classified in subheading 4202.92.9020, HTSUSA, as "Other").

For a similar ruling, see HQs 963320, 964788, and 964790 of this date.

Holding:

Accordingly, for the reasons stated above, Customs finds that the document holder is classified under subheading 4202.92.9060, HTSUSA, as "Trunks, suitcases, vanity cases, * * *: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: Other: Other." The duty, at the general one column rate, is 18.3 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

Effect on Other Rulings:

PD A88536, dated October 24, 1996, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

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[1] In 1997, the HTSUSA was modified by adding subheading 4202.92.9050, HTSUSA, "Cases designed to protect and transport compact disks (CD's), CD ROM disks, CD players, cassette players ad/or cassettes."

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, April 6, 2001.

CLA–2:RR:CR:TE 964790 JFS
Category: Classification
Tariff No. 4202.92.9060

MS. MARIA GALLEGO-TAVERAS
PATRICK POWERS CUSTOM BROKERS, INC.
27 Blake Ave.
Lynbrook, NY 11563

Re: Revocation of PD B84557, dated May 19, 1997, and PD B84558, dated May 19, 1997; Travel Document Holders.

DEAR MS. GALLEGO-TAVERAS:

This letter is to inform you that Customs has reconsidered Port Decision (PD) B84557, dated May 19, 1997, and PD B84558, dated May 19, 1997, issued to you on behalf of Customcraft, Industries, Inc., concerning the classification of document holders under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of the rulings, it has been determined that the classification of the document holders in subheading 4202.92.4500, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes PD B84557, and PD B84558.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of PD B84557 and PD B84558 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. As explained in the notice, the period within which to submit comments on this proposal was until March 30, 2001. No comments were received in response to this notice.

Facts:

In PD B84557, style #3375 was under consideration. The document holder was a ticket/passport case for use during travel. It was approximately 10 inches high, 5 ½ inches wide, 1 inch deep (when closed), and had an outer surface of textile backed PVC fabric. The article had an open top pocket on one exterior face and an open top pocket of clear plastic sheeting material on each of the two interior faces. The article had a zippered closure extending around three edges of the case with a wrist strap made of the same material as the body of the case attached to the zipper pull.

In PD B84558, style #3415 was under consideration. The document holder was a ticket/passport case for use during travel. It was approximately 10 inches high, 5¼ inches wide, and 1 inch deep (when closed), and had an outer surface of textile backed PVC fabric. The article had an open top pocket on one exterior face, and an open top pocket of clear plastic sheeting material on each of the two interior faces. The case had a zippered closure extending around three edges of the case with a wrist strap made of textile webbing attached to the zipper pull.

Issue:

Whether the travel document holders should be classified under subheading 4202.92.4500, HTSUSA, as a travel or similar bag?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes, although not dispositive or legally binding, provide a commentary

on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, provides:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Additionally, the EN to heading 4202, HTSUSA, state that the heading only covers the specifically named containers and similar containers. Applying the principle of statutory construction known as *ejusdem generis*, which means "of the same kind," Customs finds that the instant travel document holders are covered by the term "similar containers" contained in the heading.

Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), *aff'd*, 69 F.3d 495 (1995). The Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are * * * to organize, store, protect and carry various items[,]" was affirmed by the Court of Appeals for the Federal Circuit. *Totes, Inc. v. United States*, 69 F.3d 495, 498 (1995). Applying the rationale set forth in *Totes*, Customs finds that the instant travel document holders serve the purposes of organizing, storing, protecting and carrying the various documents that are typically carried during travel. Accordingly, the document holders are classifiable under heading 4202, HTSUSA, as a "similar container."

With respect to classification at the subheading level, the articles were originally classified under subheading 4202.92.4500, HTSUSA, as a travel or similar bag. The instant document holders have some of the same characteristics as a travel bag, e.g., organizing, storing, protecting, and carrying a person's documents while traveling. However, application of Additional U.S. Note 1 to Chapter 42, HTSUSA, removes the document holders from the subheading for travel and similar bags. The Additional U.S. Notes become applicable at the eight-digit level or U.S. subdivision of the international subheadings. The provision for travel and similar bags is defined in Additional U.S. Note 1, Chapter 42, HTSUSA, as follows:

> For the purposes of heading 4202, the expression *"travel, sports and similar bags"* means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

The Additional U.S. Note clarifies what characteristics will be considered to determine if a bag is a travel or similar bag. Significantly, it lists travel and similar bags as bags that are designed for carrying clothing and personal effects. In order to hold and carry clothing and personal effects, a bag must have a generic or general carrying capacity. The exemplars, backpacks and shopping bags, both have a general or generic carrying capacity suitable for holding clothing and personal effects. Because the document holders do not have a generic carrying capacity, they do not meet the definition of travel and similar bags in Additional U.S. Note 1, Chapter 42, HTSUSA.

In HQ 954298, dated October 27, 1993, Customs considered three pouches. The first pouch was described as a travel pouch and measured 6″ by 9″, had one main compartment with two pockets on the front, and attached to a person's belt. The second pouch also attached to a person's belt, but it was shaped to hold and carry a hand weapon or pistol. The third pouch was designed to hold and carry an ammunition clip and it too attached to a person's belt.

The travel pouch was deemed to be classifiable as a travel, sports and similar bag because of its ability to carry personal items. However, the weapon and clip pouches were excluded from classification as travel, sports and similar bags because they were similar to those bags excluded by U.S. Additional Note 1 to Chapter 42.

HQ 954298 provides guidance as to the proper classification of the document holders that are the subject of this ruling. The pouch that had the generic or general carrying capacity was the only pouch that was classified as a travel, sports and similar bag. The two other pouches, which were somewhat specially fitted and had no generic carrying capacity, were excluded from the provision for travel, sports and similar bags. The document holders, due to (1) their lack of general or generic carrying capacity and (2) the fact that they are partially fitted, are more similar to the weapon and clip pouch, than they are to the travel pouch. See also HQ 954288, dated October 27, 1993.

Similarly, the document holders have characteristics and functions that are similar to other fitted or compartmentalized cases such as trucker's wallets, camera tripod cases, palmtop pocket cases, and compact disk (CD) carrying cases.[1] Like the document holders, these cases are somewhat fitted to carry, protect, and organize a general class of goods. They, like the document holders, do not have a generic or general carrying capacity. See, HQ 084931, dated August 14, 1989 (trucker's wallet classified in subheading 4202.99.0000, HTSUSA, as "Other"); HQ 087113, dated July 26, 1990 (carrying case for scope, tripod and photo adapter eyepiece classified in subheading 4202.92.9000, HTSUSA, as "Other"); HQ 962341, dated November 23, 1998 ("Palmtop Pocket Case" classified in subheading 4202.92.9026, HTSUSA, as "Other"). HQ 960527, dated April 11, 2000 (CD-ROM storage folios classified in subheading 4202.92.9026, HTSUSA, as "Other"); HQ 960983, dated September 25, 1998 (diskette storage case classified in subheading 4202.99.9000, HTSUSA, as "Other"); HQ 953175, dated February 17, 1993 (compact disc holder classified in subheading 4202.92.9020, HTSUSA, as "Other").

There are several other potential subheadings under which the document holders could possibly be classified. The document holders serve to organize and protect flat items, and has many of the same characteristics as the attache cases and briefcases that are covered in subheadings 4202.11, HTSUSA, through 4202.19, HTSUSA. However, the document holders are not designed to store protect, and carry items such as newspapers, small umbrellas, and/or other objects normally carried in an attache case or briefcase. See, HQ 962757, dated June 21, 2000; and HQ 962030, dated May 13, 1999.

Additionally, the document holders are not classifiable as "articles of a kind normally carried in the pocket or in the handbag," subheadings 4202.31, HTSUSA, through 4202.39, HTSUSA. Their large size renders them too large to fit into a pocket or handbag. The wrist strap also indicates that the cases are to be carried in the hand as opposed to in a handbag or pocket.

For a similar ruling, see HQs 963320, 964788, and 964790 of this date.

Holding:

Accordingly, for the reasons stated above, Customs finds that the document holders are classified under subheading 4202.92.9060, HTSUSA, as "Trunks, suitcases, vanity cases, * * *: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: Other: Other." The duty, at the general one column rate, is 18.3 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

Effect on Other Rulings:

PD B84557, dated May 19, 1997 is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

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[1] In 1997, the HTSUSA was modified by adding subheading 4202.92.9050, HTSUS, "Cases designed to protect and transport compact disks (CD's), CD ROM disks, CD players, cassette players and/or cassettes."

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF BILLIARD CUE CASES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to tariff classification of certain billiard cue cases.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying one, and revoking two, ruling letters pertaining to the tariff classification of billiard cue cases under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published February 28, 2001, in Volume 35, Number 9, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch, (202) 927–2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to modify NY 865731, dated August 26, 1991, and to revoke Port Decision (PD) C81490, dated December 1, 1997, and New York ruling (NY) E96010, dated September 1, 1999, and to revoke any treatment accorded to substantially identical merchandise was published in the February 28, 2001, CUSTOMS BULLETIN, Volume 35, Number 9. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In PD C81490, Customs classified two styles of billiard cue cases. One was a soft-sided case with an outer surface comprised of 100% woven nylon fabric. The other was a solid molded oval billiard cue case with an exterior of vinyl. Both billiard cue cases were classified under subheading 4202.92.90, HTSUSA.

It is now Customs position that the soft sided billiard cue case with an outer surface of nylon fabric is classified under subheading 4202.92.3031, HTSUSA, which provides for: "Trunks, suitcases * * * sports bags * * * and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other: Other: Of man-made fibers: Other." The solid molded oval billiard cue case with an exterior of vinyl is classified under subheading 4202.92.4500, HTSUSA, which provides for: "Trunks, suitcases * * * sports bags * * * and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other."

In NY E86010, Customs classified a soft-sided billiard cue case with an outer surface of nylon PVC plastic under subheading 4202.92.9060, HTSUSA.

It is now Customs position that the soft sided billiard cue case with an outer surface of nylon PVC plastic is classified under subheading 4202.92.4500, HTSUSA, which provides for: "Trunks, suitcases * * * sports bags * * * and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other."

In NY 865731, Customs classified two styles of hard billiard cue cases with an outer surface of vinyl under subheading 4202.92.9040, HTSUSA.

It is now Customs position that the two hard billiard cue cases with an outer surface of vinyl are classified under subheading 4202.92.4500, HTSUSA, which provides for: "Trunks, suitcases * * * sports bags * * * and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY 865731, and is revoking PD C81490 and NY E86010 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 964801, HQ 961835, and 964800, set forth as attachments "A" "B" and "C", respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: April 6, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 6, 2001.
CLA-2 RR:CR:TE 964801 JFS
Category: Classification
Tariff No. 4202.92.4500

MS. LUCAS
CUE & CASE
5585 University Blvd. W.
Jacksonville, FL 32216

Re: Modification of NY 865731; Billiard Cue Carrying Case; Sports, Travel and Similar Bags.

DEAR MS. LUCAS:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) 865731, issued to you on August 26, 1991, concerning the tariff classification of four differ-

ent styles of billiard cue cases under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of the ruling, it has been determined that the classification of two styles of the billiard cue cases in subheading 4202.92.9040, HTSUSA, was incorrect. For the reasons that follow, this ruling modifies NY 865731.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed modification of NY 865731 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. As explained in the notice, the period within which to submit comments on this proposal was until March 30, 2001. No comments were received in response to this notice.

Facts:

In a letter dated July 24, 1991, you requested a tariff classification ruling for four styles of billiard cue cases from Taiwan. Style numbers C–10 and P–2 were soft padded cue cases. Style numbers C–42 and C–51 were hard cases covered with a vinyl material. In response to your letter, the then Customs Area Director, New York Seaport, classified styles C–42 and C–51 under subheading 4202.92.9040, HTSUSA, which provides for cases similar to those enumerated in the heading that have not already been provided for in the preceding subheadings. Style C–10 was classified under subheading 4202.92.4500, HTSUSA, which provides for, among other things, sports bags with an outer surface of sheeting of plastic. Style P–2 was classified under subheading 4202.92.3030, HTSUSA, which provides for, among other things, sports bags with an outer surface of textile materials, of man-made fibers.

Issue:

Whether billiard cue cases C–42 and C–51 are classifiable as sports bags under subheading 4202.92, HTSUSA?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9504, HTSUSA, provides for "[a]rticles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof[.]" Subheading 9504.20, HTSUSA, encompasses, "[a]rticles, parts and accessories for billiards[.]" Without examining any other chapters or headings in the tariff, it would appear that the subject billiard cue cases should be classified in subheading 9504.20, HTSUSA, as accessories for billiards. However, Legal Note 1(d) to Chapter 95 provides that the "chapter does not cover * * * sports bags or other containers of heading 4202." Accordingly, it must be determined if the billiard cue cases are sports bags or "other containers" under heading 4202, HTSUSA. If so, they are not classifiable in Chapter 95, HTSUSA.

Heading 4202, HTSUSA, provides the following:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Moreover, the EN to heading 4202, HTSUSA, state that "the heading covers only the articles specifi-

cally named * * * and similar containers." Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of ejusdem generis requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), aff'd, 69 F.3d 495 (1995). In *Totes*, the Court of Appeals for the Federal Circuit (CAFC) affirmed the Court of International Trade's determination that the "essential characteristics and purpose of Heading 4202 exemplars are * * * to organize, store, protect and carry various items." The instant billiard cue cases have the same essential characteristics, i.e., to organize, store, protect and carry items, as the containers listed in heading 4202, HTSUSA. Accordingly, applying the rationale set forth in *Totes*, the billiard cue cases come under the "similar container" language of heading 4202, HTSUSA.

The classification of the billiard cue cases as "similar" containers under heading 4202, HTSUSA, is consistent with the following rulings: HQ 951084, dated March 9, 1993 (holding that a full length tennis racket cover designed to carry more than one racket as well as other items is properly classifiable in heading 4202, HTSUSA); HQ 085376, dated May 1, 1990 (ruling that a nylon bag designed for carrying a croquet set is classifiable under heading 4202, HTSUSA, unless the bag was a component of a set, in which case it is classifiable under Chapter 95); and HQ 085918, dated March 2, 1990, (classifying a surf board bag with nylon webbing shoulder straps and handles in heading 4202, HTSUSA, because it is similar to the exemplars set forth in the EN to heading 4202, HTSUSA, and because it is designed to carry a personal effect, i.e., a surf board).

In contrast to the above listed rulings, in HQ 084694, dated August 29, 1989, Customs classified a tennis racket cover in subheading 9506.51.6000, HTSUSA, as an accessory to lawn-tennis rackets. Customs subsequently narrowed and distinguished this ruling in HQ 086567, dated May 14, 1990. The tennis racket case under consideration in the subsequent ruling, HQ 086567, was a fitted cover, designed to carry two rackets. It also had a pocket to hold balls and other small items. Customs ruled that the subsequent racket cover was a sports bag under heading 4202, HTSUSA, because (1) it was not designed for a particular racket, and (2) it had the capacity to carry small items other than the racket. Like the tennis racket cover in HQ 086567, the billiard cue cases (1) are not uniquely designed to hold or cover a particular billiard cue, and (2) have a pouch that enable them to hold small items such as cue tips, chalk, resin, and gloves.

Subheading 4202.92, HTSUSA, provides for articles not already provided for in the previous subheadings, that have an outer surface of sheeting of plastic or of textile materials. Subheadings 4202.92.15, HTSUSA, through 4202.92.45, HTSUSA, provide for travel, sports and similar bags. Subheadings 4202.92.60, HTSUSA, through 4202.92.90, HTSUSA, are residual provisions and provide for "other" containers. "Sports bags" more accurately describes the billiard cue cases under consideration than does "other" containers. Accordingly, the billiard cue cases are classifiable under subheading 4202.92.4500, HTSUSA, as sports bags with an outer surface of sheeting of plastic.

Moreover, the EN to heading 4202, HTSUSA, state that "sports bags" includes articles such as golf bags, gym bags, tennis racket carrying bags, ski bags and fishing bags. Accordingly, Customs has classified bags and containers that are designed to carry a particular kind of sporting good as "sports bags." *See* HQ 953747, dated June 10, 1993 (a sailboard mast carrying bag with woven straps is properly classifiable as a sports bag); HQ 086896, dated June 25, 1990 (ruling that a surfboard carrying bag with shoulder straps is properly classifiable as a sports bag, as opposed to Chapter 95, because it is similar in function to a ski and golf bag); HQ 087294, dated October 5, 1990 (holding that a full length tennis racket cover with a strap, and imported separately from the racket, is classifiable as a sports bag); and HQ 084684, dated July 21, 1989 (ruling that a player bag with two woven straps designed to carry softball bats, shoes, gloves and uniforms was sufficiently similar to the bags described in the EN to heading 4202, HTSUSA, to be considered a "sports bag"). *See also*, HQ 951084, HQ 085376, and HQ 085918, supra. Like the items listed above, the billiard cue cases are "sports bags," and are classifiable as such.

The billiard cue cases are properly classifiable under subheading 4202.92.4500, HTSUSA. For a similar ruling, see HQs 961835 and 964800 of this date.

Holding:

The billiard cue cases C–42 and C–51 are properly classifiable under subheading 4202.92.4500, HTSUSA, which provides for "Trunks, suitcases * * * sports bags * * * and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other." The general column one rate of duty is 20 percent ad valorem.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) or restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Effect on Other Rulings:

NY 865731, dated August 26, 1991, is hereby MODIFIED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 6, 2001.

CLA–2 RR:CR:TE 961835 JFS
Category: Classification
Tariff No. 4202.92.3031

MR. DAN E. ALLEN
MIAMI VALLEY WORLDWIDE, INC.
1300 E. Third Street
Dayton, OH 45403

Re: Revocation of Port Decision C81490; Billiard Cue Carrying Cases; Sports Travel and Similar Bags.

DEAR MR. ALLEN:

This is in response to your letter dated April 30, 1998, on behalf of Cue Stix International, Inc., requesting reconsideration of Port Decision (PD) C81490, dated December 1, 1997, which concerned the tariff classification of billiard cue cases under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reconsidered PD C81490 and believe that the classification set forth is incorrect.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of PD C81490 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. As explained in the notice, the period within which to submit comments on this proposal was until March 30, 2001. No comments were received in response to this notice.

Facts:

The articles under consideration are two fitted cases designed to carry a billiard cue that can be broken down into two parts.

Style K143 (ACTSC04BL)—is a soft sided billiard cue case. It is approximately 34-inches long and five inches wide. The exterior surface is comprised of 100% woven nylon fabric. An adjustable shoulder strap composed of 100% polypropylene webbing is permanently attached to the spine of the case. The case is opened and closed by means of a zippered closure that extends across the top of the case and approximately 6 inches down the side of the case.

The interior is padded and lined with 100% woven brushed nylon fabric to protect the billiard cue. On the front of the case, approximately 6.75 inches from the top, there is a pocket to hold billiard accessories. The closure of the pocket consists of a flap that folds down over the opening and attaches by a hook and loop fastener. A woven nylon sleeve designed to secure one half of the breakdown cue extends vertically down the interior of the case.

Style K201 (ACTT1B1SBK)—is a solid molded oval case with two compartments. Each compartment holds half of a break down billiard cue. The compartments are lined with 100% woven brushed nylon. The case is 32 inches tall, four inches wide, and two inches deep. The top portion of the case is hinged and is closed by means of a zipper. The exterior of the case is vinyl. It has an adjustable shoulder strap composed of 100 percent polypropylene webbing that is attached at each end of the case by means of a hook and loop fastener that encircles the case. There is a zippered pocket that attaches to the case by means of a sleeve that can slide up and down the case.

In a letter dated September 6, 1997, CBT International, Inc. (CBT), on behalf of Cue Stix International, Inc., requested that Customs issue a binding ruling on the classification of styles K143 and K201. CBT proposed classification in heading 9504 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) which provides for, among other things, billiard accessories.

Customs replied to CBT's request in PD C81490. Customs ruled that the billiard cue cases were properly classifiable in subheading 4202.92.90, HTSUSA, which is an "other" provision that provides for containers similar to binocular, camera, gun cases, etc.

Issue:

Whether the billiard cue cases are classifiable under (1) subheading 4202.92 HTSUSA, as travel, sports, or similar bags, (2) subheading 4202.92.90, HTSUSA, as "other" containers similar to binocular, camera, and gun cases, or (3) heading 9504, HTSUSA, as accessories for an article for parlor games including pinball machines, bagatelle and billiards?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9504, HTSUSA, provides for "[a]rticles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof[.]" Subheading 9504.20, HTSUSA, encompasses, "[a]rticles, parts and accessories for billiards[.]" Without examining any other chapters or headings in the tariff, it would appear that the subject billiard cue cases should be classified in subheading 9504.20, HTSUSA, as accessories for billiards. However, Legal Note 1(d) to Chapter 95 provides that the "chapter does not cover * * * sports bags or other containers of heading 4202." Accordingly, it must be determined if the billiard cue cases are sports bags or "other containers" under heading 4202, HTSUSA. If so, they are not classifiable in Chapter 95, HTSUSA.

Heading 4202, HTSUSA, provides the following:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Moreover, the EN to heading 4202, HTSUSA, state that "the heading covers only the articles specifically named * * * and similar containers." Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of ejusdem generis requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F. Supp. 867, 871 (1994), aff'd, 69 F.3d 495 (1995). In *Totes*, the Court of Appeals for the Federal Circuit (CAFC) affirmed the Court of International Trade's determination that the "essential characteristics and purpose of heading 4202 exemplars are * * * to organize, store, protect and carry various items." The instant billiard cue cases have the same essential characteristics, i.e., to organize, store, protect and carry items, as the containers listed in heading 4202, HTSUSA. Accordingly, applying the rationale set forth in *Totes*, the billiard cue cases come under the "similar container" provision of heading 4202, HTSUSA.

The classification of the billiard cue cases as "similar" containers under heading 4202, HTSUSA, is consistent with the following rulings: HQ 951084, dated March 9, 1993 (holding that a full length tennis racket cover designed to carry more than one racket as well as other items is properly classifiable in heading 4202, HTSUSA); HQ 085376, dated May 1, 1990 (ruling that a nylon bag designed for carrying a croquet set is classifiable under heading 4202, HTSUSA, unless the bag was a component of a set, in which case it is classifiable under Chapter 95); and HQ 085918, dated March 2, 1990, (classifying a surf board bag with nylon webbing shoulder straps and handles in heading 4202, HTSUSA, because it is similar to the exemplars set forth in the EN to heading 4202, HTSUSA, and because it is designed to carry a personal effect, i.e., a surf board).

In contrast to the above listed rulings, in HQ 084694, dated August 29, 1989, Customs classified a tennis racket cover in subheading 9506.51.6000, HTSUSA, as an accessory to lawn-tennis rackets. Customs subsequently narrowed and distinguished this ruling in HQ 086567, dated May 14, 1990. The tennis racket case under consideration in the subsequent ruling, HQ 086567, was a fitted cover, designed to carry two rackets. It also had a pocket to hold balls and other small items. Customs ruled that the subsequent racket cover was a sports bag under heading 4202, HTSUSA, because (1) it was not designed for a particular racket, and (2) it had the capacity to carry small items other than the racket. Like the tennis racket cover in HQ 086567, the billiard cue cases (1) are not uniquely designed to hold or cover a particular billiard cue, and (2) have a pouch that enables them to hold small items such as cue tips, chalk, resin, and gloves.

Subheading 4202.92, HTSUSA, provides for articles not already provided for in the previous subheadings, that have an outer surface of sheeting of plastic or of textile materials. Subheadings 4202.92.15, HTSUSA, through 4202.92.45, HTSUSA, provide for travel, sports and similar bags. Subheadings 4202.92.60, HTSUSA, through 4202.92.90, HTSUSA, are residual provisions and provide for "other" containers. "Sports bags" more accurately describes the billiard cue cases under consideration than does "other" containers. Accordingly, the billiard cue cases are classifiable under subheadings 4202.92.3031, HTSUSA, and 4202.92.4500, HTSUSA, as sports bags.

Moreover, the EN to heading 4202, HTSUSA, state that "sports bags" includes articles such as golf bags, gym bags, tennis racket carrying bags, ski bags and fishing bags. Accordingly, Customs has classified bags and containers that are designed to carry a particular kind of sporting good as "sports bags." *See* HQ 953747, dated June 10, 1993 (a sailboard mast carrying bag with woven straps is properly classifiable as a sports bag); HQ 086896, dated June 25, 1990 (ruling that a surfboard carrying bag with shoulder straps is properly classifiable as a sports bag, as opposed to Chapter 95, because it is similar in function to a ski and golf bag); HQ 087294, dated October 5, 1990 (holding that a full length tennis racket cover with a strap, and imported separately from the racket, is classifiable as a sports bag); and HQ 084684, dated July 21, 1989 (ruling that a player bag with two woven straps designed to carry softball bats, shoes, gloves and uniforms was sufficiently similar to the bags described in the EN to heading 4202, HTSUSA, to be considered a "sports bag"). *See also*, HQ 951084, HQ 085376, and HQ 085918, supra. Like the items listed above, the billiard cue cases are "sports bags," and are classifiable as such.

Style K143 is properly classified under subheading 4202.92.3031, HTSUSA, which provides for, among other things, sports bags with outer surface of nylon fabric.

Style K201 is properly classified under subheading 4202.92.4500, HTSUSA, which provides for, among other things, sports bags with outer surface of sheeting of plastic.

For a similar ruling, see HQs 961800 and 961801 of this date.

Holding:

Style K143, which is made from 100% woven nylon shell and lining fabric with 100% woven polypropylene webbing, is properly classified in subheading 4202.92.3031, HTSUSA, which provides for "Trunks, suitcases * * * sports bags * * * and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other: Other: Of man-made fibers: Other." The general column one rate of duty is 18.3 percent ad valorem. The textile category number is 670.

Style K201, which has an outer surface of sheeting of plastic, is properly classified in subheading 4202.92.4500, HTSUSA, which provides for "Trunks, suitcases * * * sports bags * * * and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other." The general column one rate of duty is 20 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) or restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Effect on Other Rulings:

PD C81490, dated December 1, 1997, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 6, 2001.

CLA–2 RR:CR:TE 964800 JFS
Category: Classification
Tariff No. 4202.92.4500

MS. PAMELA PINTER
BIG APPLE CUSTOMS BROKERS, INC.
151–02 132nd Avenue
Jamaica, NY 11434

Re: Revocation of NY E86010; Billiard Cue Carrying Case; Sports, Travel and Similar Bags.

DEAR MS. PINTER:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) E86010, issued to you on September 1, 1999, concerning the classification of a billiard cue case under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of the ruling, it has been determined that the classification of the billiard cue

case in subheading 4202.92.9060, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY E86010.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY E86010 was published on February 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 9. As explained in the notice, the period within which to submit comments on this proposal was until March 30, 2001. No comments were received in response to this notice.

Facts:

In a letter dated August 17, 1999, you requested, on behalf of Regent Sports Corp., a tariff classification ruling for a pool cue case from Taiwan. In response to your request, the Director, Customs Material Commodity Specialist Division, New York, issued NY E86010, which classified the billiard cue case under subheading 4202.92.9060, HTSUSA, which provides for containers similar to those enumerated in heading 4202 and that have not already been provided for in the preceding subheadings.

The billiard cue case was described as:

> A specially fitted case for pool cue sticks. The exterior surface is manufactured of imitation nylon PVC plastic. The interior is padded to protect the cue sticks during storage/travel. The case features a zippered top closure, a web adjustable shoulder strap and an exterior accessory pocket with a hook and loop fastener.

Issue:

Whether the billiard cue case is classifiable as a travel, sports, or similar bag under subheading 4202.92, HTSUSA?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System, Explanatory Notes (ENs), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9504, HTSUSA, provides for "[a]rticles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof[.]" Subheading 9504.20, HTSUSA, encompasses, "[a]rticles, parts and accessories for billiards[.]" Without examining any other chapters or headings in the tariff, it would appear that the subject billiard cue case should be classified in subheading 9504.20, HTSUSA, as an accessory for billiards. However, Legal Note 1(d) to Chapter 95 provides that the "chapter does not cover * * * sports bags or other containers of heading 4202." Accordingly, it must be determined if the billiard cue case is a sports bag or "other container" under heading 4202, HTSUSA. If so, it is not classifiable in Chapter 95, HTSUSA.

Heading 4202, HTSUSA, provides the following:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

The plain language of heading 4202, HTSUSA, includes similar containers. Moreover, the EN to heading 4202, HTSUSA, state that "the heading covers only the articles specifi-

cally named * * * and similar containers." Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to the broad reach of the residual provision for "similar containers" in heading 4202, HTSUSA, the courts have found that the rule of ejusdem generis requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated in order to be classified under the general term. *Totes, Inc. v. United States*, 18 Ct. Int'l Trade 919, 865 F.Supp. 867, 871 (1994), aff'd, 69 F.3d 495 (1995). In *Totes*, the Court of Appeals for the Federal Circuit (CAFC) affirmed the Court of International Trade's determination that the "essential characteristics and purpose of heading 4202 exemplars are * * * to organize, store, protect and carry various items." The instant billiard cue case has the same essential characteristics, i.e., to organize, store, protect and carry items, as the containers listed in heading 4202, HTSUSA. Accordingly, applying the rationale set forth in *Totes*, the billiard cue case comes under the "similar container" language of heading 4202, HTSUSA.

The classification of the billiard cue case as a "similar" container under heading 4202, HTSUSA, is consistent with the following rulings: HQ 951084, dated March 9, 1993 (holding that a full length tennis racket cover designed to carry more than one racket as well as other items is properly classifiable in heading 4202, HTSUSA); HQ 085376, dated May 1, 1990 (ruling that a nylon bag designed for carrying a croquet set is classifiable under heading 4202, HTSUSA, unless the bag was a component of a set, in which case it is classifiable under Chapter 95); and HQ 085918, dated March 2, 1990, (classifying a surf board bag with nylon webbing shoulder straps and handles in heading 4202, HTSUSA, because it is similar to the exemplars set forth in the EN to heading 4202, HTSUSA, and because it is designed to carry a personal effect, i.e., a surf board).

In contrast to the above listed rulings, in HQ 084694, dated August 29, 1989, Customs classified a tennis racket cover in subheading 9506.51.6000, HTSUSA, as an accessory to lawn-tennis rackets. Customs subsequently narrowed and distinguished this ruling in HQ 086567, dated May 14, 1990. The tennis racket case under consideration in the subsequent ruling, HQ 086567, was a fitted cover, designed to carry two rackets. It also had a pocket to hold balls and other small items. Customs ruled that the subsequent racket cover was a sports bag under heading 4202, HTSUSA, because (1) it was not designed for a particular racket, and (2) it had the capacity to carry small items other than the racket. Like the tennis racket cover in HQ 086567, the billiard cue case (1) is not uniquely designed to hold or cover a particular billiard cue, and (2) has a pouch that enables it to hold small items such as cue tips, chalk, resin, and gloves.

Subheading 4202.92, HTSUSA, provides for articles not already provided for in the previous subheadings, that have an outer surface of sheeting of plastic or of textile materials. Subheadings 4202.92.15, HTSUSA, through 4202.92.45, HTSUSA, provide for travel, sports and similar bags. Subheadings 4202.92.60, HTSUSA, through 4202.92.90, HTSUSA, are residual provisions and provide for "other" containers. "Sports bags" more accurately describes the billiard cue case under consideration than does "other" containers. Accordingly, the billiard cue case is classifiable under subheading 4202.92.4500, HTSUSA, as a sports bag with an outer surface of sheeting of plastic.

Moreover, the EN to heading 4202, HTSUSA, state that "sports bags" includes articles such as golf bags, gym bags, tennis racket carrying bags, ski bags and fishing bags. Accordingly, Customs has classified bags and containers that are designed to carry a particular kind of sporting good as "sports bags." *See* HQ 953747, dated June 10, 1993 (a sailboard mast carrying bag with woven straps is properly classifiable as a sports bag); HQ 086896, dated June 25, 1990 (ruling that a surfboard carrying bag with shoulder straps is properly classifiable as a sports bag, as opposed to Chapter 95, because it is similar in function to a ski and golf bag); HQ 087294, dated October 5, 1990 (holding that a full length tennis racket cover with a strap, and imported separately from the racket, is classifiable as a sports bag); and HQ 084684, dated July 21, 1989 (ruling that a player bag with two woven straps designed to carry softball bats, shoes, gloves and uniforms was sufficiently similar to the bags described in the EN to 4202, HTSUSA, to be considered a "sports bag"). *See also*, HQ 951084, HQ 085376, and HQ 085918, supra. Like the items listed above, the billiard cue case is a "sports bag," and is classifiable as such.

The billiard cue case is properly classifiable under subheading 4202.92.4500, HTSUSA. For a similar ruling, see HQs 961835 and 964800 of this date.

Holding:

The billiard cue case is properly classifiable under subheading 4202.92.4500, HTSUSA, which provides for "Trunks, suitcases * * * sports bags * * * and similar containers: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other." The general column one rate of duty is 20 percent ad valorem.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) or restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Effect on Other Rulings:

NY E86010, dated September 1, 1999, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 18, 2001

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF PLASTIC HANGERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification and revocation of ruling letters, and revocation of treatment relating to tariff classification of plastic hangers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify and revoke three ruling letters pertaining to the tariff classification of plastic hangers under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before June 1, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify and revoke three ruling letters pertaining to the tariff classification of plastic hangers. Although in this notice Customs is specifically referring to three rulings (HQ 961973, NY G86020, and NY F86629), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In HQ 961973 dated August 13, 1999, NY G86020 dated January 18, 2001, and NY F86629 dated May 30, 2000, set forth as Attachments A, B, and C, respectively, to this document, Customs classified certain plas-

tic hangers in subheading 3926.90.98, HTSUS, as: "Other articles of plastics * * *: * * * Other: * * * Other." It is now Customs position that the plastic hangers are classified in subheading 3923.90.00, HTSUS, as: "Articles for the conveyance or packing of goods, of plastics * * *: * * * Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify and revoke the three rulings cited above and any other ruling not specifically identified in order to reflect the proper classification of the plastic hangers pursuant to the analysis set forth in proposed HQ 964963, 964964, and 964948. These proposed rulings are set forth as Attachments D, E, and F, respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: April 9, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 13, 1999.

CLA-2 RR:CR:GC 961973 PH
Category: Classification
Tariff No. 3926.90.98

JAMES L. SAWYER, ESQ.
KATTEN, MUCHIN & ZAVIS
525 West Monroe Street, Suite 1600
Chicago, IL 60661-3693

Re: Plastic garment hangers.

DEAR MR. SAWYER:

This is in reference to your request on behalf of Sears, Roebuck and Co. to the Director, Customs National Commodity Specialist Division, New York, N.Y., dated April 28, 1998, for a ruling as to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of certain plastic garment hangers. Samples were provided. Your letter was referred to this office for reply. In the preparation of this ruling, consideration was given to representations made in a meeting with you and an officer of your client, as well as your supplemental representation of May 7, 1999. We regret the delay.

Facts:

Your client has initiated a hanger recovery program in which, subsequent to use in their retail operations, hangers are forwarded to central locations and sorted as suitable or unsuitable for reuse. Those unsuitable for reuse are recycled into plastic pellets to be used in the manufacture of new hangers. The hangers suitable for reuse are generally more solid

and durably constructed than others. The hangers which are identified for reuse are packed and coded with relevant hanger style information. They are forwarded to a hanger supply company which enters the hangers into its inventory and commingles them with newly manufactured hangers. The hangers (those identified for reuse and those newly manufactured) are sold to garment vendors to be used in the packing, shipping, and transportation of future apparel to retail stores. Your client estimates the useful life of the hangers under consideration to be 4 to 6 cycles; therefore, you state, a single hanger will likely be associated with various garments during its useful life.

The sample of the hangers stated to be "substantially identical" to the hangers which will be a part of the hanger recovery program consists of one piece of molded plastic with a metal "hook" to hang the hanger and garment. The plastic portion is of relatively thin plastic with a ridge around it approximately 3/8" thick (i.e., it is not a fully rounded closet-type hanger, but it is more substantial than a wire hanger).

You cite General Rule of Interpretation (GRI) 5(b) and *Holly Stores, Inc. v. United States*, 2 CIT 278, 534 F. Supp. 818 (1981), *affirmed* 1 Fed. Cir. (T.) 16, 69 F.2d 1387 (1982), and other authorities. You contend that the hangers are suitable for reuse and should be classified separately from the garments which are packed with them, as articles for the conveyance or packing of goods of plastics, in subheading 3923.90.00, HTSUS. You cite several Customs rulings (Headquarters Ruling (HQ) 084068 dated July 21, 1989; New York Rulings (NYs) 898260 dated June 20, 1994, 813284 dated August 31, 1995, and 813637 dated September 1, 1995) interpreting *Holly Stores* and GRI 5(b) to demonstrate that it is Customs position that "reuse" of a hanger to display another garment in the internal operations of the store which initially received the hanger (with a different garment) was not "repetitive use in the practical, commercial sense as intended by GRI 5(b)" (April 28, 1998, letter, page 7). You contrast such internal use with your client's hanger recovery program, in which you state that approximately one-third of the hangers imported which are eligible for the program are placed into the program and sold to a separate entity which sells them to your client or other domestic garment vendors. You contend that in such use "it is clear that [your client's] recycled hangers are commercially treated as separate and distinct articles of commerce from the garments [with] which they were originally imported, and that they are an independent subject of trade and commerce" (April 28, 1998, letter, page 9).

You also contend that the phrase "clearly suitable for repetitive use" in GRI 5(b) is not a "principal use" provision (see Additional U.S. Rule of Interpretation 1(a)), and you cite *Kerr, Maurer Company v. United States*, 46 CCPA 110, C.A.D. 710 (1959), for a definition of the phrase "suitable for use" as "actually, practically, and commercially fit" for the use concerned, not necessarily "chief use" (the TSUS predecessor to "principal use"), but more than "* * * evidence of casual, incidental, exception, or possible use". You refer to HQ 114360 dated June 18, 1998, holding that clear plastic garment hangers processed in a program similar to that of your client qualify as instruments of international traffic under subheading 9803.00.50, HTSUS, and stating that "the hangers * * * are of durable construction [and] are physically capable of, and suitable for, reuse, or repetitive use", as providing a precedent for the suitability for reuse of the hangers under consideration.

Issues:

Whether the hangers are classified with the goods with which they are entered under GRI 5(b) or as articles for the conveyance or packing of goods, of plastics, in heading 3923, HTSUS, household articles and toilet articles, of plastics, in heading 3924, or other articles of plastics, in heading 3926, HTSUS.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6, taken in order.

The ENs constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, published in the Federal Register August 23, 1989 (54 FR 35127, 35128).

The HTSUS headings under consideration are as follows:

3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914

GRI 5(b) provides:

> 5. In addition to the foregoing provisions [i.e., the preceding GRIs], the following rules shall apply in respect of the goods referred to therein:
>
> * * * * * * *
>
> (b) * * * [P]acking materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such materials or packing containers are clearly suitable for repetitive use. [Emphasis added.]

The EN for GRI 5(b) states "[t]his rule governs the classification of packing materials and packing containers of a kind normally used for packing the goods to which they relate[;] [h]owever, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use, for example, certain metal drums or containers of iron or steel for compressed or liquefied gas [and because] [t]his Rule is subject to Rule 5(a) * * * the classification of cases, boxes and similar containers of the kind mentioned in Rule 5(a) shall be determined by the application of that rule."

As you state, the leading Court case on this issue is *Holly Stores, supra.* Although *Holly Stores* involved the applicability of the tariff schedule preceding the HTSUS, the Tariff Schedules of the United States (TSUS), Customs has taken the position that the interpretation in *Holly Stores* of the provision in the TSUS which corresponds to GRI 5(b) of the HTSUS is applicable to GRI 5(b). That is, in HQ 084068, cited above, we stated:

> We believe the Court's interpretation of "reuse" in *Holly Stores* applies to the interpretation of "repetitive use" in GRI 5(b) and the correct application of that Rule of Interpretation. "Clearly suitable for repetitive use" as used in GRI 5(b) is taken to mean repetitive use in the practical, commercial use. This interpretation follows the case law as reflected in *Holly Stores* and other various container cases [citations omitted].

The hangers in *Holly Stores* were of two types, an all-plastic hanger and a wire hanger coated with plastic. The Court upheld Customs classification of the hangers with the garments with which they were imported, finding that they were "* * * not designed for, or capable of, reuse in the commercial sense" (2 CIT at 288). The Court stated that the reuse alleged by the plaintiff in *Holly Stores* was not the reuse contemplated by General Headnote 6(b), TSUS, because "[i]n the first place, the hanger itself does not enter the mainstream of commerce nor does it become a separate item of commerce" (2 CIT at 289). The Court went on to make clear its distinction between internal use and commercial use, stating "[i]t is evident that witness [name omitted] contemplated a reuse of the plastic hanger only in the limited sense that K-Mart would internally reuse it without reference to reuse in the commercial sense" (2 CIT at 290). Other evidence, according to the Court, supported limited, incidental reuse so that the hanger could not be separately dutiable *(i.e.*, "* * * there was testimony to the effect that [the] hangers are reused to return damaged or recalled merchandise to the distribution center [but] [u]pon cross-examination it was estimated that under one (1) percent of the total merchandise shipped to the retail store is returned to the distribution center" (2 CIT at 290)).

The Court of Appeals for the Federal Circuit (CAFC) affirmed the CIT decision in *Holly Stores (supra),* stating that "'[r]euse' in this context has been consistently interpreted to mean practical, commercial reuse, not incidental reuse" (1 Fed. Cir. (T) at 17). The CAFC held "* * * that the uses of these hangers beyond shipping them once from overseas to the United States were purely incidental * * * [that] [e]ach holder, in virtually every case, was associated only with one piece of clothing during its entire useful life [and] [t]he hangers were never commercially treated as 'separate and distinct' from the articles of clothing hung on them" (1 Fed. Cir. (T) at 17).

From these authorities, we conclude that the caveat in GRI 5(b) that the provision requiring packing materials and packing containers entered with the goods therein to be classified with the goods "* * * is not binding when such packing materials or packing containers are clearly suitable for repetitive use" is neither a "principal use" provision

(Additional U.S. Rule of Interpretation 1(a)) nor an "actual use" provision (see 19 C.F.R. 10.131 through 10.139). See, in this regard, *Kerr, Maurer Company v. United States, supra*, and HQ 114360, referred to above. Both the CIT and the CAFC in *Holly Stores* considered the particular reuse of the hangers, and did not use a "principal [then chief] use" analysis. *E.g.*, "the controversy centers abut the degree of the reuse and whether plaintiff's reuse of the hangers in issue is sufficient to be considered reuse in the commercial sense as contemplated by the statute" (2 CIT at 285, emphasis added); "Plaintiff's reuse of the K–10 hanger is not the commercial reuse contemplated under General Headnote 6(b)" (2 CIT at 288, emphasis added); "[W]e hold that the uses of these hangers beyond shipping them once from overseas to the United States were purely incidental" (1 Fed. Cir. (T.) at 17, emphasis added); "Each holder, in virtually every case, was associated only with one piece of clothing during its entire useful life. The hangers were never commercially treated as 'separate and distinct' from the articles of clothing hung on them" (1 Fed. Cir. (T.) at 17, emphasis added).

Accordingly, we must consider whether the reuse of the hangers under consideration is sufficient to be considered reuse in the commercial sense as contemplated by the statute (see above, 2 CIT at 285). The statute (GRI 5(b)) requires that the hangers be "clearly suitable for repetitive use." The hanger recovery program is a reuse in the commercial sense, as described in *Holly Stores (i.e.*, the very limited reuse in that case was emphasized by the Court to be by the importer's own enterprise; in this case, a very substantial proportion of the hanger styles under consideration (approximately one-third, versus 1% in *Holly Stores)* is reused, and that reuse is such that the hangers are treated as separate and distinct articles of commerce *(i.e.*, the hangers are forwarded to a hanger supply company which enters the hangers into its inventory and commingles them with new hangers, selling them to domestic and international garment vendors; *compare* to *Holly Stores*, in which "[t]he reuse demonstrated is strictly limited to the operation of K-mart's own enterprise and then, at best, the reuse is shown only to be incidental and fugitive and relative to K-Mart's own scale of operations" (2 CIT at 288)).

The CIT in *Holly Stores* indicated that use of a hanger "to rehang heavier garments that originally arrive on wire color-coded hangers" may be more substantial than the other reuses described (2 CIT at 290). The Court went on to state that "it cannot anticipate that such reuse would be of such magnitude relative to K-Mart's entire hangwear operation that it would indicate that the K–10 [hanger] is reusable in the commercial sense" *(ibid.)*. In this case, the reuse (transferring the hangers to another company which sells them to other garment vendors) is clearly more substantial than rehanging heavier garments of the importer on the hangers and, unlike in *Holly Stores*, the magnitude of reuse is clearly described (see above).

We conclude that the hangers under consideration "are clearly suitable for repetitive use" and, therefore, that they are not classifiable with the goods with which they are entered. This conclusion is limited to the facts under consideration, in which:

1. The hangers are of relatively substantial construction;
2. A substantial proportion of the styles suitable for reuse is forwarded to another company which commingles them with new hangers and sells them to garment vendors (which may include the original importer) for use in packing, shipping, and transportation of garments.

This conclusion is distinguished from HQ 084068 dated July 21, 1989, in which the reuse was limited to hanging other garments in the importer's stores and, consequently, the "reuse" was not sufficient to be considered reuse in the commercial sense under *Holly Stores*. Our conclusion is consistent with HQ 114360 dated June 18, 1998, finding certain hangers "durable and capable of reuse" and holding them to be "substantial holders" within the meaning of subheading 9803.00.50, HTSUS. These hangers were similar to those under consideration and they were processed in a program similar to that under consideration *(i.e.*, they were clear plastic, relatively substantial hangers acquired by an entity which sorts, sanitizes, packages, and exports them to various foreign garment manufacturers for use in packaging garments).

Inasmuch as the hangers are "clearly suitable for repetitive use" and are not required to be classified with the goods with which they are entered, they must be classified in heading 3923, 3924, or 3926, HTSUS. The hangers are not "rounded" or "shouldered", as plastic hangers which are used in the household often are; as the available information demonstrates *(i.e.*, the facts you have provided, *Holly Stores*, and HQs 084068 and 114360 (referred to above), the hangers are of the kind used commercially. Therefore, we conclude that they may not be classified as household articles in heading 3924, HTSUS. Insofar as

classification in heading 3923, HTSUS, is concerned, it is Customs position that the articles of that heading are "to be used primarily as temporary packaging for the merchandise contained therein [and] [o]nce the purchase was made, the [articles] would be discarded" (HQ 960218 dated October 22, 1997; see also HQ 961092 dated March 24, 1998, and NY 871719 dated February 26, 1992). Although the hangers are of the kind used commercially, as established above, they are clearly intended for reuse. Accordingly, they may not be classified as articles for the conveyance or packing of goods of plastics in heading 3923, HTSUS. The hangers are classified as other articles of plastics, in subheading 3926.90.98, HTSUS.

Holding:

The hangers are "clearly suitable for repetitive use" and, accordingly, are classifiable separately from the garments with which they are entered under GRI 5(b), provided that: (1) they are of relatively substantial construction; and (2) a substantial proportion of which is forwarded to another company which commingles them with new hangers and sells them to garment vendors (which may include the original importer) for use in packing, shipping, and transportation of garments. They are classified as other articles of plastics in subheading 3926.90.98, HTSUS.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, January 18, 2001.

CLA–2–39:RR:NC:SP:221 G86020
Category: Classification
Tariff No. 3926.90.9880

MR. ARTHUR W. BODEK
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
590 Madison Avenue
20th Floor
New York, NY 10022

Re: The tariff classification of garment hangers.

DEAR MR. BODEK:

In your letter dated December 21, 2000, on behalf of Liz Claiborne, Inc., you requested a tariff classification ruling.

The samples submitted with your letter are garment hangers molded from plastic resin. All of the hangers have a metal swivel top hook. The hangers that are designed to hold pants or skirts have metal clasps as well. The styles are identified as LIZTP top hanger 15″ (485), LIZTP top hanger 17″ (484), LIZTP top hanger 19″ (479/679), LIZJKT top hanger heavy weight 15″ (3315), LIZJKT top hanger heavy weight 17″ (3328), LIZJKT top hanger heavy weight 19″, SP-LIZBT bottom soft pad hanger 10″ (6210), SP-LIZBT bottom soft pad hanger 12″ (6212/3312), SP-LIZBT bottom soft pad hanger 14″ (6214), GP-LIZBT bottom gripper hanger 10" (6010/6310), GP-LIZBT bottom gripper hanger 12″ (6012) and GP-LIZBT bottom gripper hanger 14″ (6014/6314). You have indicated that the hangers are manufactured in several different countries, including Honduras, Hong Kong, India, Korea, Mexico, Sri Lanka and Taiwan. It is assumed for purposes of this reply that the hangers are all imported from countries with which the United States has Normal Trade Relations.

The hangers will be imported as packing with a garment hanging on each one. You request that the hangers be classified separately from the garments. General Rule of Interpretation (GRI) 5(b) of the Harmonized Tariff Schedule provides that, subject to the provisions of GRI 5(a), packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such materials or packing contain-

ers are clearly suitable for repetitive use. The sample hangers are of relatively substantial construction. You have submitted documents indicating that some of the imported hangers are forwarded to a hanger supply company that sorts and sanitizes the hangers and then sells them to garment vendors for use in packing, shipping, and transporting other garments. You indicate that the hangers are reused in other ways, such as being given to customers upon request, and for in-store reuse in hanging additional garments. You state also that these hangers are identical to hangers purchased directly from hanger suppliers for in-store use to display garments imported without hangers.

The applicable subheading for the hangers, whether imported with or without the garments, will be 3926.90.9880, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics, other. The rate of duty will be 5.3 percent ad valorem.

Articles classifiable under subheading 3926.90.9880, HTS, which are products of Honduras, India, or Sri Lanka are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" and then search for the term "GSP".

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at (212) 637–7034.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 30, 2000.

CLA–2–39:RR:NC:SP:221 F86629
Category: Classification
Tariff No. 3926.90.9880

MR. JOHN A. TERC
MAY MERCHANDISING COMPANY
MAY DEPARTMENT STORES INTERNATIONAL INC.
615 Olive Street
St. Louis, MO 63101

Re: The tariff classification of reusable plastic hangers from Hong Kong, Sri Lanka, Korea, Taiwan, Turkey and Indonesia.

DEAR MR. TERC:

In your letter dated May 2, 2000, you requested a tariff classification ruling.

The sample submitted with your letter is a hanger molded from K-resin plastic, with a metal swivel top hook. It is identified as style #484, 17 inch top hanger. It will be imported as packing with a garment hanging on it. You request that the hanger be classified separately from the garment. General Rule of Interpretation (GRI) 5(b) of the Harmonized Tariff Schedule provides that, subject to the provisions of GRI 5(a), packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such materials or packing containers are clearly suitable for repetitive use. The sample hanger is of relatively substantial construction. You have submitted a videotape which supports your claim that the hangers are not sold with the garments but are part of a hanger

recovery program for recycling and reuse. You have also submitted documents verifying your claim that a substantial proportion of the imported hangers are forwarded to a hanger supply company which sorts and sanitizes the hangers and then sells them to garment vendors for use in packing, shipping, and transporting other garments. The hangers are considered to be suitable for repetitive use, and thus classifiable separately from the garments with which they are imported.

The applicable subheading for the hangers will be 3926.90.9880, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics, other. The rate of duty will be 5.3 percent ad valorem.

Articles classifiable under subheading 3926.90.9880, HTS, which are products of Sri Lanka, Turkey or Indonesia are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" and then search for the term "GSP".

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 212–637–7034.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 964963 GOB
Category: Classification
Tariff No. 3923.90.00

MR. JAMES L. SAWYER
KATTEN, MUCHIN & ZAVIS
525 West Monroe Street
Suite 1600
Chicago, IL 60661–3693

Re: Modification of HQ 961973; Plastic hangers.

DEAR MR. SAWYER:

This letter is with respect to HQ 961973 dated August 12, 1999, issued to you on behalf of Sears, Roebuck and Co. ("Sears"), with respect to the tariff classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of certain plastic garment hangers. We have reviewed the classification set forth in HQ 961973 and have determined that it is incorrect. This ruling sets forth the correct classification.

Facts:

The basic facts were described as follows in HQ 961973:

> Your client has initiated a hanger recovery program in which, subsequent to use in their retail operations, hangers are forwarded to central locations and sorted as suitable or unsuitable for reuse. Those unsuitable for reuse are recycled into plastic pellets to be used in the manufacture of new hangers. The hangers suitable for reuse are generally more solid and durably constructed than others. The hangers which are identified for reuse are packed and coded with relevant hanger style information. They are forwarded to a hanger supply company which enters the hangers into its inventory and commingles them with newly manufactured hangers. The hangers (those identified

for reuse and those newly manufactured) are sold to garment vendors to be used in the packing, shipping, and transportation of future apparel to retail stores. Your client estimates the useful life of the hangers under consideration to be 4 to 6 cycles; therefore, you state, a single hanger will likely be associated with various garments during its useful life.

The sample of the hangers stated to be "substantially identical" to the hangers which will be a part of the hanger recovery program consists of one piece of molded plastic with a metal "hook" to hang the hanger and garment. The plastic portion is of relatively thin plastic with a ridge around it approximately 3/8" thick (i.e., it is not a fully rounded closet-type hanger, but it is more substantial than a wire hanger).

In HQ 961973, we held as follows:

The hangers are "clearly suitable for repetitive use" and, accordingly, are classifiable separately from the garments with which they are entered under GRI 5(b), provided that: (1) they are of relatively substantial construction; and (2) a substantial proportion of which is forwarded to another company which commingles them with new hangers and sells them to garment vendors (which may include the original importer) for use in packing, shipping, and transportation of garments. They are classified as other articles of plastics in subheading 3926.90.98, HTSUS.

Issue:

What is the tariff classification of the hangers?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

3923	Articles for the conveyance or packing of goods, of plastics * * *:
3923.90.00	Other.
*	* * * * * * *
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other.

GRI 5(b), HTSUS, provides as follows:

Subject to the provisions of rule 5(a) above [which are not pertinent here], packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

In HQ 961973, we concluded:

* * * that the hangers under consideration "are clearly suitable for repetitive use" and, therefore, that they are not classifiable with the goods with which they are entered. This conclusion is limited to the facts under consideration, in which:

1. The hangers are of relatively substantial construction;
2. A substantial proportion of the styles suitable for reuse is forwarded to another company which commingles them with new hangers and sells them to garment vendors (which may include the original importer) for use in packing, shipping, and transportation of garments.

Our modification of HQ 961973 does *not* relate to the conclusion that the hangers are clearly suitable for repetitive use within the meaning of GRI 5(b). Our modification of HQ 961973 relates to the determination in HQ 961973 that the hangers are classified in sub-

heading 3926.90.98, HTSUS. The GRI 5(b) finding and the subheading 3926.90.98, HTSUS, classification are separate determinations.

In HQ 961973, we stated: "Insofar as classification in heading 3923, HTSUS, is concerned, it is Customs position that the articles of that heading are 'to be used primarily as temporary packaging for the merchandise contained therein [and] [o]nce the purchase was made, the [articles] would be discarded'." We have reconsidered the scope of heading 3923, HTSUS. We now believe that there is no requirement that goods of heading 3923, HTSUS, be used primarily as temporary packaging. Further, heading 3923, HTSUS, does not exclude goods that are suitable for repetitive use.

EN 39.23 provides in pertinent part: "This heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products."

EN 39.26 provides in pertinent part: "This heading covers articles, not elsewhere specified or included, of plastics * * *"

Additional U.S. Rule of Interpretation 1 (a), HTSUS, provides as follows:

> 1. In the absence of special language or context which otherwise requires—
>
> (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

It is Customs position that the principal use of the hangers is for the conveyance of garments. The hangers are substantial enough to be used repetitively for the conveyance of garments. Accordingly, we find that the hangers are described in heading 3923, HTSUS, which covers articles for the conveyance or packing of goods. Therefore, the hangers are not described in heading 3926, HTSUS, because that heading covers articles not elsewhere specified or included. See EN 39.26, excerpted above. The articles at issue here are included in heading 3923, HTSUS. We note additionally that heading 3923 is more specific than heading 3926.

The subject plastic hangers are classified in subheading 3923.90.00, HTSUS, as: "Articles for the conveyance or packing of goods, of plastics * * * : * * * Other."

Holding:

The subject plastic hangers are classified in subheading 3923.90.00, HTSUS, as: "Articles for the conveyance or packing of goods, of plastics * * * : * * * Other."

Effect on Other Rulings:

HQ 961973 is modified with respect to the classification of the plastic hangers.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964964 GOB
Category: Classification
Tariff No. 3923.90.00

MR. ARTHUR W. BOBEK
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
590 Madison Avenue
20th Floor
New York, NY 10022

Re: NY G86020 revoked; Plastic hangers.

DEAR MR. BOBEK:

This letter is with respect to New York Ruling Letter ("NY") G86020 dated January 18, 2001, issued to you on behalf of Liz Claiborne, Inc., by the Customs National Commodity Specialist Division, New York, concerning the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of certain plastic hangers.

Facts:

In NY G86020, the goods are described as follows:

> The samples submitted with your letter are garment hangers molded from plastic resin. All of the hangers have a metal swivel top hook. The hangers that are designed to hold pants or skirts have metal clasps as well. The styles are identified as LIZTP top hanger 15" (485), LIZTP top hanger 17" (484), LIZTP top hanger 19" (479/679), LIZJKT top hanger heavy weight 15" (3315), LIZJKT top hanger heavy weight 17" (3328), LIZKT top hanger heavy weight 19", SP LIZBT bottom soft pad hanger 10" (6210), SP-LIZBT bottom soft pad hanger 12" (6212/3312), SP-LIZBT bottom soft pad hanger 14" (6214), GP-LIZBT bottom gripper hanger 10" (6010/6310), GP-LIZBT bottom gripper hanger 12" (6012) and GP-LIZBT bottom gripper hanger 14" (6014/6314).

In NY G86020, Customs determined that the plastic hangers were classified in subheading 3926.90.98, HTSUS. We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the tariff classification of the subject plastic hangers?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

3923	Articles for the conveyance or packing of goods, of plastics * * *:
3923.90.00	Other.
* * * * * * *	
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other.

GRI 5(b), HTSUS, provides as follows:

> Subject to the provisions of rule 5(a) above [which are not pertinent here], packing materials and packing containers entered with the goods therein shall be classified with

the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

EN 39.23 provides in pertinent part: "This heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products."

EN 39.26 provides in pertinent part: "This heading covers articles, not elsewhere specified or included, of plastics * * *"

Additional U.S. Rule of Interpretation 1 (a), HTSUS, provides as follows:

1. In the absence of special language or context which otherwise requires—

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

We have previously held that certain hangers which are of the same class or kind as the subject hangers (i.e., plastic hangers of substantial construction with metal tops) are clearly suitable for repetitive use within the meaning of GRI 5(b). See HQ 961973 dated August 13, 1999. Our finding in HQ 961973 was limited to the following facts: "1. The hangers are of relatively substantial construction; 2. A substantial portion of the styles suitable for reuse is forwarded to another company which commingles them with new hangers and sells them to garment vendors * * * for use in packing, shipping, and transportation of garments." See also HQ 114360 dated June 18, 1998, where we held that certain plastic hangers were "physically capable of, and suitable for, reuse or repetitive use."

In HQ 961973, we stated: "Insofar as classification in heading 3923, HTSUS, is concerned, it is Customs position that the articles of that heading are 'to be used primarily as temporary packaging for the merchandise contained therein [and] [o]nce the purchase was made, the [articles] would be discarded'." We have reconsidered the scope of heading 3923, HTSUS. We now believe that there is no requirement that goods of heading 3923, HTSUS, be used primarily as temporary packaging. Further, heading 3923, HTSUS, does not exclude goods that are suitable for repetitive use.

It is Customs position that the principal use of the subject plastic hangers is for the conveyance of garments. The hangers are substantial enough to be used repetitively for the conveyance of goods. Accordingly, we find that the hangers are described in heading 3923, HTSUS, which covers articles for the conveyance or packing of goods. Therefore, the hangers are not described in heading 3926, HTSUS, because that heading covers articles not elsewhere specified or included. See EN 39.26, excerpted above. The articles at issue here are included in heading 3923, HTSUS. We note additionally that heading 3923 is more specific than heading 3926.

he subject plastic hangers are classified in subheading 3923.90.00, HTSUS, as: "Articles for the conveyance or packing of goods, of plastics * * * : * * * Other."

Holding:

The subject plastic hangers are classified in subheading 3923.90.00, HTSUS, as: "Articles for the conveyance or packing of goods, of plastics * * * : * * * Other."

Effect on Other Rulings:

NY G86020 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964948 GOB
Category: Classification
Tariff No. 3923.90.00

MR. JOHN A. TERC
MAY MERCHANDISING COMPANY
MAY DEPARTMENT STORES INTERNATIONAL INC.
615 Olive Street
St. Louis, MO 63101

Re: NY F86629 revoked; Plastic hangers.

DEAR MR. TERC:

This letter is with respect to New York Ruling Letter ("NY") F86629 dated May 30, 2000, issued to you by the Customs National Commodity Specialist Division, New York, concerning the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of certain plastic hangers.

Facts:

In NY G86020, the goods are described as follows:

> * * * a hanger molded from K-resin plastic, with a metal swivel top hook. It is identified as style 3484, 17 inch top hanger * * * The sample hanger is of relatively substantial construction. You have submitted a videotape which support your claim that the hangers are not sold with the garments but are part of a hanger recovery program for recycling and reuse. You have also submitted documents verifying your claim that a substantial portion of the imported hangers are forwarded to a hanger supply company which sorts and sanitizes the hangers and then sells them to garment vendors for use in packing, shipping, and transporting other garments.

In NY G86629, Customs determined that the plastic hangers were classified in subheading 3926.90.98, HTSUS. We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the tariff classification of the subject plastic hangers?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

3923	Articles for the conveyance or packing of goods, of plastics * * *:
3923.90.00	Other.
*	* * * * * * *
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other.

GRI 5(b), HTSUS, provides as follows:

> Subject to the provisions of rule 5(a) above [which are not pertinent here], packing materials and packing containers entered with the goods therein shall be classified with

the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

EN 39.23 provides in pertinent part: "This heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products."

EN 39.26 provides in pertinent part: "This heading covers articles, not elsewhere specified or included, of plastics * * *"

Additional U.S. Rule of Interpretation 1 (a), HTSUS, provides as follows:

1. In the absence of special language or context which otherwise requires—

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

In NY F86629, Customs stated that: "The hangers are considered to be suitable for repetitive use, and thus classifiable separately from the garments with which they are imported."

We have previously held that certain hangers which are of the same class or kind as the subject hangers (i.e., plastic hangers of substantial construction with metal tops) are clearly suitable for repetitive use within the meaning of GRI 5(b). See HQ 961973 dated August 13, 1999. Our finding in HQ 961973 was limited to the following facts: "1. The hangers are of relatively substantial construction; 2. A substantial portion of the styles suitable for reuse is forwarded to another company which commingles them with new hangers and sells them to garment vendors * * * for use in packing, shipping, and transportation of garments." See also HQ 114360 dated June 18, 1998, where we held that certain plastic hangers were "physically capable of, and suitable for, reuse or repetitive use."

In HQ 961973, we stated: "Insofar as classification in heading 3923, HTSUS, is concerned, it is Customs position that the articles of that heading are 'to be used primarily as temporary packaging for the merchandise contained therein [and] [o]nce the purchase was made, the [articles] would be discarded'." We have reconsidered the scope of heading 3923, HTSUS. We now believe that there is no requirement that goods of heading 3923, HTSUS, be used primarily as temporary packaging. Further, heading 3923, HTSUS, does not exclude goods that are suitable for repetitive use.

It is Customs position that the principal use of the subject plastic hangers is for the conveyance of garments. The hangers are substantial enough to be used repetitively for the conveyance of garments. Accordingly, we find that the hangers are described in heading 3923, HTSUS, which covers articles for the conveyance or packing of goods. Therefore, the hangers are not described in heading 3926, HTSUS, because that heading covers articles not elsewhere specified or included. See EN 39.26, excerpted above. The articles at issue here are included in heading 3923, HTSUS. We note additionally that heading 3923 is more specific than heading 3926.

The subject plastic hangers are classified in subheading 3923.90.00, HTSUS, as: "Articles for the conveyance or packing of goods, of plastics * * * : * * * Other."

Holding:

The subject plastic hangers are classified in subheading 3923.90.00, HTSUS, as: "Articles for the conveyance or packing of goods, of plastics * * * : * * * Other."

Effect on Other Rulings:

NY F86629 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CHEMICAL COMPOUND CAPTISOL™ (SULFOBUTYLETHER ß-CYCLODEXTRIN)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of the chemical compound sulfobutylether ß-cyclodextrin, also known as Captisol™.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling concerning the tariff classification of the chemical compound sulfobutylether ß-cyclodextrin, also known as Captisol™, and is revoking any treatment previously accorded by Customs to substantially identical transactions, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on March 14, 2001, in Volume 35, Number 11, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch (202) 927–2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs published a notice in the March 14, 2001, CUSTOMS BULLETIN, in Volume 35, Number 11, proposing to revoke New York Ruling Letter (NY) B89369, dated November 25, 1997, pertaining to the tariff classification of sulfobutylether ß-cyclodextrin, also known as Captisol™, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In NY B89369, Customs ruled that sulfobutylether ß-cyclodextrin was classified in subheading 3505.10.00, HTSUS, which provides for "[D]extrins and other modified starches (for example, pregelatinized or esterified starches): glues based on starches, or on dextrins or other modified starches: [D]extrins and other modified starches: [O]ther: [O]ther." It is now Customs position that classification in heading 3505, HTSUS, in NY B89369, is in error. Instead, sulfobutylether ß-cyclodextrin is correctly classified in subheading 2940.00.60, HTSUS, the provision for "[S]ugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers and sugar esters, and their salts, other than products of heading 2937, 2938 or 2939: [O]ther."

In the instant product, sulfobutylether ß-cyclodextrin, the introduction of sulfobutyl functionality at one or more of the glucopyranose units in the ß-cyclodextrin structure creates ether linkages at the 2, 3, and 6 positions. Since the parent molecule, ß-cyclodextrin, is a cyclic oligosaccaride, which qualifies as a sugar, creation of ether linkages by the addition of the sulfobutyl groups makes the instant product a sugar ether of heading 2940, HTSUS.

Although the addition of the sulfobutylether functionality in the instant product creates a molecule that is not a "separately defined organic compound" or "a mixture of two or more isomers of the same organic compound," it is a sugar ether of heading 2940 and therefore remains classified in Chapter 29 by action of chapter note 1(c).

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a

treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is revoking NY B89369 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 963287, set forth as an attachment to this document. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: April 17, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, April 17, 2001.

CLA–2 RR:CR:GC 963287 AM
Category: Classification
Tariff No. 2940.00.60

MR. JOHN W. WHITAKER
O'NEILL & WHITAKER, INC.
1809 Baltimore Ave.
Kansas City, MO 64108

Re: NY B89369 revoked; sulfobutylether ß-cyclodextrin (Captisol™).

DEAR MR. WHITAKER:

This is in reference to a New York Ruling Letter (NY) B89369 issued to you, on behalf of Cydex, Inc., on November 25, 1997, by the Director, Customs National Commodity Specialist Division, New York, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of sulfobutylether ß-cyclodextrin, also known as Captisol™. In NY B89369, this product was classified in subheading 3505.10.00, HTSUS, which provides for "[D]extrins and other modified starches (for example, pregelatinized or esterified starches); glues based on starches, or on dextrins or other modified starches: [D]extrins and other modified starches."

After careful review by this office, we have determined that the classification set forth in NY B89369 for sulfobutylether ß-cyclodextrin is in error. This ruling revokes NY B89369.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY B89369 was published on March 14, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 11. No comments were received in response to this notice.

Facts:

Sulfobutylether ß-cyclodextrin has the following molecular formula: C42H70–nO35(C4H8SO3Na)n; where n = the average degree of substitution. The substance is assigned CAS registry number 182410–00–0 (previously assigned CAS # 7585–39–9D). During the synthesis of this substance, 1,4-butane sultone reacts with any of three hydroxyl groups on each of the seven glucopyranose units of the ß-cyclodextrin molecule. The resulting material is a composite mixture having an average degree of substitution of seven. Sulfobutylether ß-cyclodextrin is marketed as Captisol™ which enhances water solubility of other compounds used in the administration of intravenous, intraocular, intramuscular and oral pharmaceuticals so as to decrease local and systemic irritation and reaction in the patient.

Issue:

Whether sulfobutylether ß-cyclodextrin is classified in heading 2940, HTSUS, as "* * * sugar ethers and sugar esters, and their salts, * * *", or in heading 3505, HTSUS, as "[D]extrins and other modified starches".

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following HTSUS headings are relevant to the classification of this product:

2940.00 Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers and sugar esters, and their salts, other than products of heading 2937, 2938 or 2939:

* * * * * * *

3505 Dextrins and other modified starches (for example, pregelatinized or esterified starches); glues based on starches, or on dextrins or other modified starches:

The Chapter Notes to Chapter 29 state, in pertinent part, as follows:

1. Except where the context otherwise requires, the headings of this chapter apply only to:

(a) Separate chemically defined organic compounds, whether or not containing impurities;

(b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27); * * *

(c) The products of headings Nos. 29.36 to 29.39 or the sugar ethers and sugar esters, and their salts, of heading No. 29.40, or the products of heading No. 29.41, whether or not chemically defined;

In NY B89369 this merchandise was incorrectly classified in heading 3505, HTSUS, as a modified starch possibly because the word "dextrin", incorporated into its name, is *eo nomine* provided for in the heading. However, ß-cyclodextrin, the parent molecule of the instant substance, is a sugar of heading 2940, HTSUS, not a dextrin or other modified starch. Thus, ß-cyclodextrin is not described in heading 3505, HTSUS. (See New York Ruling Letter B80145, dated January 28, 1997. See also Headquarters Ruling Letter 955089, dated February 15, 1994).

In the instant product, sulfobutylether ß-cyclodextrin, the introduction of the sulfobutyl functionality at one or more of the glucopyranose units in the ß-cyclodextrin structure

creates ether linkages at the 2, 3, and 6 positions. Since the parent molecule, ß–cyclodextrin, is a cyclic oligosaccaride, which qualifies as a sugar, creation of ether linkages by the addition of the sulfobutyl groups makes the instant product a sugar ether of heading 2940, HTSUS.

Although the addition of the sulfobutylether functionality in the instant product creates a molecule that is not a "separately defined organic compound" or "a mixture of two or more isomers of the same organic compound," it is a sugar ether of heading 2940 and therefore remains classified in Chapter 29 by action of chapter note 1(c), above.

Holding:

Sulfobutylether ß-cyclodextrin is classified in subheading 2940.00.60, HTSUS, as "[S]ugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers and sugar esters, and their salts, other than products of heading 2937, 2938 or 2939: [O]ther."

Effect on Other Rulings:

NY B89369 is revoked.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO CLASSIFICATION OF LIQUID FILLED PLASTIC EYE MASKS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letters and revocation of treatment relating to the classification of liquid filled plastic eye masks.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of liquid filled plastic eye masks and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of March 14, 2001, Vol. 35, No. 11. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202–927–1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. *§1484)* the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on March 14, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 11, proposing to revoke NY 869248, dated December 18, 1991, NY 864393, dated June 26, 1991, and NY A84501, dated June 19, 1996, pertaining to the tariff classification of liquid filled plastic eye masks under the Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in reply to the notice.

In NY 869248, dated December 18, 1991, the classification of a product commonly referred to as liquid filled plastic eye masks was determined to be in subheading 1520.90.00, HTSUS. In NY 864393, dated June 26, 1991, the classification of a product commonly referred to as liquid filled plastic eye masks was determined to be in subheading 3823.90.5050, HTSUS. In NY A84501, dated June 19, 1996, the classification of a product commonly referred to as liquid filled plastic eye masks was determined to be in subheading 3005.90.5090, HTSUS. Since the issuance of those rulings, Customs has had a chance to review the classification of this merchandise and has determined that the inconsistent classifications are in error. The correct classification of liquid filled plastic eye masks is in subheading 3924.90.50, HTSUS, which provides for other household and toilet articles, of plastics, other.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY 869248, NY 864393 and NY A84501, and any other ruling not specifically identified to reflect the proper classification of the liquid filled plastic eye masks merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 964850, 964851 and 964852 *(see* Attachments "A" to "C" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

As stated in the proposal notice, these revocations will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised the Customs Service during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this notice.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: April 18, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 18, 2001.

CLA–2 RR:CR:GC 964850ptl
Category: Classification
Tariff No. 3924.90.55

MR. DAVID A. EISEN
TOMPKINS & DAVIDSON, P.C.
One Astor Plaza
1515 Broadway
New York, NY 10036

Re: Plastic, liquid filled eye masks; NY 869248 revoked.

DEAR MR. EISEN:

This is in reference to NY 869248, dated December 18, 1991, issued to you on behalf of Avon Products, Inc. by the Director, National Commodity Specialist Division, New York, in which a product identified as "Tranquil Moments Holiday Relaxation Kit" was classified in

subheading 1520.90.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other glycerol (glycerine), including synthetic glycerol. We have reviewed that ruling and determined that the classification provided is incorrect. Pursuant to the analysis set forth below, the correct classification for the article is subheading 3924.90.55, HTSUS, which provides for other household and toilet articles, of plastics, other, other.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY 869248 was published on March 14, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 11. No comments were received.

Facts:

According to NY 869248, the "Tranquil Moments Holiday Relaxation Kit" consists of a vinyl plastic eye mask filled with glycerine and water. The article can be heated or chilled. The user places the article over his or her eyes to produce the desired relaxation effect.

Issue:

What is the classification of plastic, liquid filled eye mask?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

1520.00.0000	Glycerol, crude; glycerol waters and glycerol lyes
3005	Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes:
* * * * * * *	
3005.90	Other:
* * * * * * *	
3005.90.50	Other
* * * * * * *	
3005.90.5090	Other
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:
3824.90	Other:
	Other:
	Other
	Other
	Other
3824.90.9050	Other
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
* * * * * * *	
3924.90	Other:
* * * * * * *	
3924.90.55	Other.

As stated above, the GRIs are to be applied in order. GRI 1 provides that articles are to be classified by the terms of the headings and any relevant Section and Chapter Notes. For an article to be classified is a particular heading, that heading must describe the article.

When we examine the vinyl plastic eye mask under consideration, we find that the article does not fall within the scope of goods described by any of general chapter notes of chapter 15, which state that the chapter covers:

> (1) Animal or vegetable fats and oils, whether crude, purified or refined or treated in certain ways (e.g., boiled, sulphurised or hydrogenated).
> (2) Certain products derived from fats or oils, particularly their cleavage products (e.g., crude glycerol).
> (3) Compounded edible fats and oils (e.g., margarine).
> (4) Animal or vegetable waxes.
> (5) Residues resulting from the treatment of fatty substances or of animal or vegetable waxes.

Because the vinyl plastic eye mask does not fall within the scope of articles covered by the chapter, the mask cannot be classified in a subheading of chapter15.

Although the vinyl plastic masks are claimed to provide relaxation because of their ability to provide a cooling or heating treatment to the user, they do not rise to the level of dressings, adhesive plasters or poultices contemplated by heading 3005, HTSUS. The ENs to heading 30.05 indicate that in order to be included within the coverage of that heading, the articles must be some type of bandage, wadding or gauze for dressings which has been specially treated and which is clearly intended for the medical, surgical, dental or veterinary purpose of being applied to a wound or bodily injury. The vinyl plastic masks are not this type of medical products. Thus, they cannot be classified in subheading 3005, HTSUS.

Because the eye masks are composite goods, consisting of a plastic exterior and a liquid filler, for tariff purposes, they constitute goods consisting of two or more materials and substances. Thus, they may not be classified solely on the basis of GRI 1. The eye masks are described in GRI 2(b) which covers mixtures and combinations of materials and substances and goods consisting of two or more materials and substances. According to GRI 2(b), "The classification of goods consisting or more than one material or substance shall be according to the principles of Rule 3." Because the ingredients of the eye masks present us with a composite good for classification purposes, we turn to GRI 3(b) which governs the classification of mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale. Under GRI 3(b), classification of an article is to be determined on the basis of the component which gives the article its essential character. The EN's provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

Recently, there have been several Court decisions on "essential character" for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See, *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed 119 F.3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), affirmed CAFC No. 98–1227 (March 16, 1999). Based on the foregoing, we conclude that in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN Rule 3(b)(VIII) should also be considered, as applicable.

Before we can determine the essential character of the eye masks, we must first determine the classification of the constituent materials or components.

Heading 3924, HTSUS, provides for, among other things, household articles and toilet articles, of plastics. The ENs to subheading 39.24 provide that the heading covers such household articles of plastics as hot water bottles. The liquid contents of the masks are inert mixtures which are either heated or cooled prior to use by the consumer. The flexible plastic shell conforms to the wearer's face to permit maximum contact with the mask. Hot water bottles have traditionally been used by people to provide relief to sore areas. The vinyl plastic eye mask is an updated version of the traditional hot water bottle, taking advan-

tage of modern manufacturing techniques to achieve traditional results. For the above reasons, by application of GRI 1, the vinyl plastic portion of the eye mask is classified in heading 3924, HTSUS, which provides for other household articles and toilet articles, of plastics.

The liquid mixture (glycerine and water) which is inside the mask is itself a composite good. Heading 2201, HTSUS, provides for potable waters consumed as a beverage. The water inside the mask, mixed with glycerine, is not potable in its imported condition. Water with glycerine does not fall within any of the exemplars given for types of products included in heading 2201. Further, heading 2201 does not provide for "articles of water." Thus, the contents of the mask cannot be classified in heading 2201, HTSUS. Similarly, for the reasons stated above, the liquid contents of the mask are not classifiable in heading 1502, HTSUS, as glycerol. The liquid contents of the mask is a mixture of water and glycerol which is classified in heading 3824, HTSUS, as residual products of the chemical or allied industries, not elsewhere specified or included. By its terms, this heading is broad enough to cover mixtures that are put up in a way that renders them fit for a particular application.

The composite goods being classified are being imported to be used as eye masks. One of the key elements of an eye mask is its ability to conform to the contours of the wearer's face. In this case, the "indispensable function" (*Better Home Plastics, supra*) of the article is that it can be comfortably worn on one's face. The plastic shell which contains the water/dye mixture provides the article with the flexibility necessary to enable the wearer to wrap the article around his or her face while simultaneously enjoying the benefits of the hot or cool contents. Without the plastic, the article could not function as designed. This criterion indicates that the essential character of the good is provided by the plastic component. We therefore conclude that the essential character of the product is provided by the plastic component so that, under GRI 3(b), the eye masks are classifiable in heading 3924, HTSUS.

For the above reasons, plastic, water/glycerol filled, eye masks are classified in subheading 3924.90.55, HTSUS, which provides for other household articles and toilet articles, of plastics, other, other.

Holding:

The "Tranquil Moments Holiday Relaxation Kit" vinyl plastic eye mask is classified in subheading 3924.90.55, HTSUS, which provides for: Tableware, kitchenware, other household articles and toilet articles, of plastics, other, other.

NY 869248, dated December 18, 1991, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 18, 2001.

CLA-2 RR:CR:GC 964851ptl
Category: Classification
Tariff No. 3924.90.55

MS KAREN L. HERSHMAN
MANAGER OF ADMINISTRATION CINZIA
FASHION DYNAMICS, INC.
100 School Street
Bergenfield, NJ 07621

Re: Plastic, chemical filled eye masks; NY 864393 revoked.

DEAR MS. HERSHMAN:

This is in reference to NY 864393, dated June 26, 1991, issued to you by the Director, National Commodity Specialist Division, New York, in which a plastic, chemical filled eye

mask was classified in subheading 3824.90.5050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for chemical products not elsewhere provided for. We have reviewed that ruling and determined that the classification provided is incorrect. Pursuant to the analysis set forth below, the correct classification for the article is subheading 3924.90.55, HTSUS, which provides for other household and toilet articles, of plastics, other, other.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY 864393 was published on March 14, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 11. No comments were received.

Facts:

According to NY 864393, the plastic eye mask is filled with chemicals and can be heated or chilled. The user places the plastic in a textile packet which has an elastic band to keep the article over his or her eyes.

Issue:

What is the classification of plastic, chemical filled, eye mask?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:
3824.90	Other:
	Other:
	Other
	Other
	Other
3824.90.9050	Other
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
* * * * * * *	
3924.90	Other:
* * * * * * *	
3924.90.55	Other.

As stated above, the GRIs are to be applied in order. GRI 1 provides that articles are to be classified by the terms of the headings and any relevant Section and Chapter Notes. For an article to be classified is a particular heading, that heading must describe the article.

Because the eye masks are goods consisting partly of plastic and partly of a chemical mixture, for tariff purposes, they constitute goods consisting of two or more materials and substances. Thus, they may not be classified solely on the basis of GRI 1. The eye masks are described in GRI 2(b) which covers mixtures and combinations of materials and substances and goods consisting of two or more materials and substances. According to GRI 2(b), "The classification of goods consisting or more than one material or substance shall be according to the principles of Rule 3." Because the ingredients of the eye masks present us with a composite good for classification purposes, we turn to GRI 3(b) which governs the classification of mixtures, composite goods consisting of different materials or made up of differ-

ent components, and goods put up in sets for retail sale. Under GRI 3(b), classification of an article is to be determined on the basis of the component which gives the article its essential character. The EN's provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

Recently, there have been several Court decisions on "essential character" for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See, *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed 119 F.3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), affirmed CAFC No. 98–1227 (March 16, 1999). Based on the foregoing, we conclude that in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN Rule 3(b)(VIII) should also be considered, as applicable.

Before we can determine the essential character of the eye masks, we must first determine the classification of the constituent materials or components.

Heading 3924, HTSUS, provides for, among other things, household articles and toilet articles, of plastics. The ENs to subheading 39.24 provide that the heading covers such household articles of plastics as hot water bottles. The liquid contents of the masks are chemically inert mixtures which are either heated or cooled prior to use. The flexible plastic shell conforms to the wearer's face to permit maximum contact with the mask. Hot water bottles have traditionally been used by people to provide relief to sore areas. The vinyl plastic eye mask is an updated version of the traditional hot water bottle, taking advantage of modern manufacturing techniques to achieve traditional results. For the above reasons, by application of GRI 1, the vinyl plastic portion of the eye mask is classified in heading 3924, HTSUS, which provides for other household articles and toilet articles, of plastics.

The chemical mixture which is inside the mask is itself a composite good. The chemical mixture is classified in heading 3824, HTSUS, as residual products of the chemical or allied industries, not elsewhere specified or included.

The composite goods being classified are being imported to be used as eye masks. One of the key elements of an eye mask is its ability to conform to the contours of the wearer's face. In this case, the "indispensable function" (*Better Home Plastics, supra*) of the article is that it can be comfortably worn on ones face. The plastic shell which contains the chemicals provides the article with the flexibility necessary to enable the wearer to wrap the article around his or her face while simultaneously enjoying the benefits of the hot or cool contents. Without the plastic, the article could not function as designed. This criterion indicates that the essential character of the good is provided by the plastic component. We therefore conclude that the essential character of the product is provided by the plastic component so that, under GRI 3(b), the eye masks are classifiable in heading 3924, HTSUS.

For the above reasons, plastic chemical filled eye masks are classified in subheading 3924.90.55, HTSUS, which provides for other household articles and toilet articles, of plastics, other, other.

Holding:

The plastic chemical filled eye masks are classified in subheading 3924.90.55, HTSUS, which provides for: Tableware, kitchenware, other household articles and toilet articles, of plastics, other, other.

NY 864393, dated June 26, 1991, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 18, 2001.

CLA–2 RR:CR:GC 964852ptl
Category: Classification
Tariff No. 3924.90.55

MS KIM YOUNG
BDP INTERNATIONAL, INC.
2721 Walker Road, N.W.
Grand Rapids, MI 49504

Re: Relaxing eye mask; NY A84501 revoked.

DEAR MS. YOUNG:

This is in reference to NY A84501, dated June 19, 1996, issued to you on behalf of your client, Meijer, Inc., by the Director, National Commodity Specialist Division, New York, in which a plastic eye mask (Item #586330, Style # 61–BB706A), was classified in subheading 3005.90.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: Wadding, gauze, bandages and similar articles * * *, impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: other: other: other. We have reviewed that ruling and determined that the classification provided is incorrect. Pursuant to the analysis set forth below, the correct classification for the article is subheading 3924.90.55, HTSUS, which provides for other household and toilet articles, of plastics, other, other.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY A84501 was published on March 14, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 11. No comments were received.

Facts:

According to NY A84501, the clear plastic eye mask is filled with purple-colored water (due to the presence of a food colorant). The mask can be heated by putting it in hot water, or chilled by placing it in a refrigerator. The mask has two oblong eye holes. The user places the mask over his or her eyes and secures it by using a permanently attached plastic strap (which is an extension of the mask) that has a buckle. The mask is claimed to relieve stuffed nasal passages, tired or puffy eyes, hangovers, and other head discomforts.

Issue:

What is the classification of a liquid filled plastic eye mask?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored; ice and snow:
3005	Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes:

* * * * * * *

3005.90 Other:

* * * * * * *

3005.90.50 Other

* * * * * * *

3005.90.5090 Other

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:

3824.90 Other:
Other:
Other
Other
Other

3824.90.9050 Other

3924 Tableware, kitchenware, other household articles and toilet articles, of plastics:

* * * * * * *

3924.90 Other:

* * * * * * *

3924.90.55 Other.

As stated above, the GRIs are to be applied in order. GRI 1 provides that articles are to be classified by the terms of the headings and any relevant Section and Chapter Notes. For an article to be classified is a particular heading, that heading must describe the article.

NY A84501 classified the vinyl plastic eye masks in heading 3005, HTSUS, which provides for wadding, gauze, bandages and similar articles. Although the vinyl plastic eye masks are claimed to provide relief and other benefits because of their ability to provide a cooling or heating treatment to the user, they do not rise to the level of dressings, adhesive plasters or poultices contemplated by heading 3005, HTSUS. The ENs to heading 30.05 indicate that in order to be included within the coverage of that heading, the articles must be some type of bandage, wadding or gauze for dressings which has been specially treated and which is clearly intended for the medical, surgical, dental or veterinary purpose of being applied to a wound or bodily injury. The vinyl plastic eye masks are not this type of medical product. Thus, they cannot be classified in subheading 3005, HTSUS.

Because the eye masks are composite goods, consisting of a plastic exterior and a liquid filler, for tariff purposes, they constitute goods consisting of two or more materials and substances. Thus, they may not be classified solely on the basis of GRI 1. The eye masks are described in GRI 2(b) which covers mixtures and combinations of materials and substances and goods consisting of two or more materials and substances. According to GRI 2(b), "The classification of goods consisting or more than one material or substance shall be according to the principles of Rule 3." Because the ingredients of the eye masks present us with a composite good for classification purposes, we turn to GRI 3(b) which governs the classification of mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale. Under GRI 3(b), classification of an article is to be determined on the basis of the component which gives the article its essential character. The EN's provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

Recently, there have been several Court decisions on "essential character" for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See, *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed 119 F.3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), affirmed CAFC No. 98–1227 (March 16, 1999). Based on the foregoing, we conclude that in an essential charac-

ter analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN Rule 3(b)(VIII) should also be considered, as applicable.

Before we can determine the essential character of the eye masks, we must first determine the classification of the constituent materials or components.

Heading 3924, HTSUS, provides for, among other things, household articles and toilet articles, of plastics. The ENs to subheading 39.24 provide that the heading covers such household articles of plastics as hot water bottles. The liquid contents of the masks are chemically inert mixtures which are either heated or cooled prior to use. The flexible plastic shell conforms to the wearer's face to permit maximum contact with the mask. Hot water bottles have traditionally been used by people to provide relief to sore areas. The vinyl plastic eye mask is an updated version of the traditional hot water bottle, taking advantage of modern manufacturing techniques to achieve traditional results. For the above reasons, by application of GRI 1, the vinyl plastic portion of the eye mask is classified in heading 3924, HTSUS, which provides for other household articles and toilet articles, of plastics.

The liquid mixture (water and dye) which is inside the mask is itself a composite good. Heading 2201, HTSUS, provides for potable waters consumed as a beverage. The water inside the mask, although mixed with food grade dye, is not potable in its imported condition. Water with added coloring does not fall within any of the exemplars given for types of products included in heading 2201. Further, heading 2201 does not provide for "articles of water." Thus, the contents of the mask cannot be classified in heading 2201, HTSUS. The liquid contents of the mask is a mixture of water and a dye which is classified in heading 3824, HTSUS, as residual products of the chemical or allied industries, not elsewhere specified or included. By its terms, this heading is broad enough to cover mixtures that are put up in a way that renders them fit for a particular application.

The composite goods being classified are being imported to be used as eye masks. One of the key elements of an eye mask is its ability to conform to the contours of the wearer's face. In this case, the "indispensable function" (*Better Home Plastics*, *supra*) of the article is that it can be comfortably worn on one's face. The plastic shell which contains the water/dye mixture provides the article with the flexibility necessary to enable the wearer to wrap the article around his or her face while simultaneously enjoying the benefits of the hot or cool contents. Without the plastic, the article could not function as designed. This criterion indicates that the essential character of the good is provided by the plastic component. We therefore conclude that the essential character of the product is provided by the plastic component so that, under GRI 3(b), the eye masks are classifiable in heading 3924, HTSUS.

For the above reasons, plastic, water/dye filled, eye masks are classified in subheading 3924.90.55, HTSUS, which provides for other household articles and toilet articles, of plastics, other, other.

Holding:

The plastic, water/dye filled, eye masks are classified in subheading 3924.90.55, HTSUS, which provides for: Tableware, kitchenware, other household articles and toilet articles, of plastics, other, other.

NY A84501, dated June 19, 1996, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF RADAR DETECTORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of radar detectors.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of radar detectors under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before June 1, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchan-

dise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of radar detectors. Although in this notice Customs is specifically referring to one ruling, HQ 954371, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In HQ 954371 dated August 12, 1993, set forth as Attachment A to this document, Customs classified a radar detector in subheading 8531.90.00, HTSUS, as: "Electric sound or visual signaling apparatus * * * other than those of heading 8512 or 8530 * * * : * * * Other apparatus: * * * Other: * * * Other."

It is now Customs position that the radar detectors in this ruling are properly classifiable under subheading 8512.30.00, HTSUS, as: "Electrical lighting or signaling equipment * * * of a kind used for cycles or motor vehicles * * * : * * * Sound signaling equipment." Proposed HQ 964601, revoking HQ 954371, is set forth as Attachment B to this document. Customs position is consistent with a recent decision on similar merchandise by the Harmonized System Committee ("HSC"). See Annex IJ/15 to Doc. NC0250E2 (HSC/25/March 20000) where the HSC classified similar merchandise in subheading 8512.30.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 954371 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 964601. Additionally, pursuant to 19 U.S.C.

1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: April 18, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 12, 1993.

CLA–2–CO:R:C:M 954371 MMC
Category: Classification
Tariff No. 8531.80.00

MR. KURT M. MOSS
JAPAN FREIGHT CONSOLIDATORS CA., INC.
1800 Landmeier Road
Elk Grove Village, IL 60007

Re: Radar detector; NYRL 879733 revoked; 8526.91.0040; ENs 85.26, 85.31.

DEAR MR. MOSS:

This is in response to your May 18, 1993 letter to the Customs office in New York on behalf of Sanyo Tecnica Co., requesting reconsideration of NYRL 879733, dated November 12, 1992, concerning the classification of a radar detector under the Harmonized Tariff Schedule of the United States (HTSUS). Your request has been forwarded to this office of a reply.

Facts:

The merchandise is a Lambda series model 563XK radar detector. It utilizes three microwave integrated circuits with seven additional integrated circuits and is designed to be installed in an automobile to detect and signal the automobile driver of the presence of police speed detecting radar. The car battery supplies the radar detector with the necessary operating energy.

In NYRL 879733 you were advised that the subject merchandise was classifiable under subheading 8526.91.00, HTSUS, which provides for radar apparatus, radio navigational aid apparatus and radio remote control apparatus.

Issue:

Is the radar detector classifiable as an electrical sound or visual signaling device?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1, HTSUS, states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. Chapter 85, HTSUS, provides for electrical machinery and parts thereof.

Heading 8526, HTSUS, provides for radar apparatus, radio navigational aid apparatus and remote control apparatus. In understanding the language of the HTSUS, the Harmo-

nized Commodity Description and Coding System Explanatory Notes may be consulted. The Explanatory Notes (EN), although not dispositive, are to be used to determine the proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128, (August 23, 1989).

EN 85.26, p. 1375, states that this heading includes:

(1) Radio navigational aid equipment (e.g., radio beaconsand radio buoys, with fixed or rotating aerial; receivers,including radio compasses equipped with multiple aerials orwith a directional frame aerial).
(2) Ship or aircraft navigational radar equipment * * *
(3) Blind approach landing or traffic control apparatus * * *
(4) Radar height measuring apparatus * * *
(5) Meteorological radar * * *
(6) Blind bombing equipment.
(7) Radar devices for proximity fuses of shells or bombs.
(8) Air raid warning radar apparatus.
(9) Range and direction finding radar apparatus for naval or antiaircraft guns.
(10) Radar transponders; * * *
(11) Radio apparatus for remote control * * *
(12) Radio apparatus for the detonation of mines * * *

In light of the examples in EN 85.26, we believe that a radar detector is not described by this subheading. Articles listed in EN 85.26, all utilize radar while the article in question merely detects and signals that it is present. Therefore, the radar detector is not classifiable in heading 8526, HTSUS.

Heading 8531 provides for electric sound or visual signalling apparatus. EN 85.31, p.1381, provides in pertinent part that: * * * this heading covers all electrical apparatus used for signaling purposes, whether using sound for the transmission of the signal (bells, buzzers, hooters, etc.) or using visual indication (lamps, flaps, illuminated numbers, etc.) and whether operated by hand (e.g., door bells) or automatically (e.g., burglar alarms).

Radar detectors use a combination of sound and visual signals to indicate the presence of radar. Therefore, they are classifiable in heading 8531, HTSUS, specifically, subheading 8531.80.00, HTSUS, which provides for [e]lectrical sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530: [o]ther apparatus.

Accordingly, it is necessary to revoke NYRL 879733 pursuant to section 177.9(d) of the Customs Regulations [19 C.F.R. §177.9(d)]. For the purposes of future transactions involving merchandise of this type, NYRL 879733 will no longer be valid precedent.

Holding:

Radar detectors are classifiable in subheading 8531.80.00, HTSUS, with a column one duty rate of 2.7% *ad valorem*.

Effect on Other Rulings:

Pursuant to section 177.9(d), Customs Regulations [19 C.F.R. § 177.9(d)], NY 879733 is revoked in full.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 964601 GOB
Category: Classification
Tariff No. 8512.30.00

MR. KURT M. MOSS
JAPAN FREIGHT CONSOLIDATORS, INC.
1800 Landmeier Road
Elk Grove, IL 60007

Re: HQ 954371 revoked; Radar detector.

DEAR MR. MOSS:

This letter is with respect to HQ 954371 dated August 12, 1993, issued to you on behalf of Sanyo Tecnica Co., concerning the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of a radar detector.

Facts:

The subject merchandise is a Lambda series model 563XK radar detector, which was described in HQ 954371 as follows:

> It utilizes three microwave integrated circuits with seven additional integrated circuits and is designed to be installed in an automobile to detect and signal the automobile driver of the presence of police speed detecting radar. The car battery supplies the radar detector with the necessary operating energy.

In HQ 954371 we found the subject radar detector to be classified in subheading 8531.80.00, HTSUS, as: "Electric sound or visual signaling apparatus * * * other than those of heading 8512 or 8530 * * * : * * * Other apparatus: * * * Other: * * * Other." We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the tariff classification of the subject radar detector?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8512	Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof:
8512.30.00	Sound signaling equipment
* * * * * * *	
8531	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.80	Other apparatus:
	Other:
8531.80.90	Other.

EN 85.12 provides, in pertinent part, as follows:

> This heading covers electrical apparatus and appliances specialised for use on cycles or motor vehicles for lighting or signalling purposes
>
> * * * * * * *
>
> The heading includes, *inter alia:*
>
> * * * * * * *
>
> (11) Horns, sirens and other electrical sound signalling appliances.

Heading 8531, HTSUS, contains certain limiting language, i.e., "* * * other than those of heading 8512 * * *" Accordingly, if the subject radar detectors are described in heading 8512, HTSUS, they are not classified in heading 8531, HTSUS.

The *McGraw-Hill Encyclopedia of Science & Technology* (1995) provides in pertinent part as follows:

> Radar operates by transmitting electromagnetic energy into the surroundings and detecting energy reflected by objects. If a narrow beam of this energy is transmitted by the directive antenna, the direction from which reflections come and hence the bearing of the object may be estimated. The distance to the reflecting object is estimated by measuring the period between the transmission of the radar pulse and reception of the echo. In most radar applications, this period will be very short since electromagnetic energy travels with the velocity of light. Many different kinds of radar have been developed for a wide range of purposes, but they all use electromagnetic radiation (radio waves) to detect and measure certain characteristics of objects (or targets) in their vicinity.

We find that the subject radar detectors are described in the heading text of heading 8512, HTSUS, i.e., they are electrical signalling equipment of a kind used in motor vehicles. We also note that heading 8512, HTSUS, is more specific than heading 8531, HTSUS.

We therefore find that the subject radar detectors are classified in subheading 8512.30.00, HTSUS, as: "Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof: * * * Sound signaling equipment."

Our determination is consistent with a recent decision on similar merchandise ("An electrical apparatus designed to be used in a motor vehicle to warn the driver that a speed detection device, a 'radar gun' or a 'laser gun,' is operating in the vicinity.") by the Harmonized System Committee ("HSC"). See Annex IJ/15 to Doc. NC0250E2 (HSC/25/March 2000) where the HSC classified similar merchandise in subheading 8512.30. As we stated in T.D. 89–80, decisions of the HSC should be treated in the same manner as the EN's, i.e., while neither legally binding nor dispositive, the they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89–80 further states that EN's and decisions of the HSC "should receive considerable weight."

Holding:

The radar detectors are classified in subheading 8512.30.00, HTSUS, as: "Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof: * * * Sound signaling equipment."

Effect on Other Rulings:

HQ 954371 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

James L. Watson
Herbert N. Maletz
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg*

Clerk

Leo M. Gordon

* Effective April 1, 2001

(Slip Op. 01–41)

AL TECH SPECIALTY STEEL CORP., ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND POHANG IRON AND STEEL CO., LTD., ET AL., DEFENDANT-INTERVENORS

Court No. 98–10–03054

(Dated April 10, 2001)

JUDGMENT ORDER

RIDGWAY, *Judge:* Upon consideration of the Final Results of Redetermination Pursuant to Court Remand ("Remand Determination") filed by Defendant, in the absence of any argument in opposition thereto, and upon due deliberation, it is hereby

ORDERED that the Remand Determination be, and hereby is, sustained in all respects; and it is further

ORDERED that this action be, and hereby is, dismissed.

(Slip Op. 01–42)

HOOGOVENS STAAL BV, ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 98–04–00926

[*Final Results of Redetermination on Remand* of U.S. Department of Commerce *affirmed* with respect to reconsideration of the treatment of warranty and technical service expenses; *remanded* with respect to Commerce's determination that sales were made at two levels of trade.]

(Dated April 10, 2001)

Powell, Goldstein, Frazer & Murphy LLP (Peter O. Suchman, Niall P. Meagher, and *Susan M. Mathews,* Esqs.) for plaintiffs Hoogovens Staal BV and Hoogovens Steel USA, Inc.

Skadden, Arps, Slate, Meagher & Flom LLP (Robert E. Lighthizer, John J. Mangan, and *Worth S. Anderson,* Esqs.) for plaintiffs U.S. Steel Group, A Unit of USX Corporation, et al.

Stuart E. Schiffer, Acting Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Erin E. Powell,* Trial Attorney); *David R. Mason,* Attorney, Office of the Chief Counsel for Import Administration, United States Department of Commerce, of counsel, for defendant.

OPINION AND ORDER

INTRODUCTION

WATSON, *Senior Judge:* In *Hoogovens Staal BV*[1] *v. United States,* 86 F. Supp.2d 1317, 1333 (CIT 2000), this court remanded to the United States Department of Commerce ("Commerce") the agency's *Final Results* of the Third Administrative Review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands[2] *("Final Results")* with respect to: (1) clarification of the evidentiary basis for Commerce's finding that Hoogovens' sales in the home and U.S. markets were made at different levels of trade; and (2) reconsideration of Commerce's treatment of Hoogovens' home market warranty and technical service expenses as direct expenses. *Id.* at 1331. Currently before the court are Commerce's Final Results of Redetermination pursuant to Court Remand, Slip Op. 00–8, dated September 29, 2000 *(Remand Results)* and the parties' comments. The court presumes familiarity with the court's prior decision.

DISCUSSION

I.

LEVEL OF TRADE

The antidumping statute provides for an adjustment in the dumping margin calculation for comparison of the prices in home market and U.S. sales made at different levels of trade. 19 U.S.C. § 1677b(a)(7)(A). The court first addresses Commerce's determination in its *Remand Results* that Hoogovens' sales were made at two different levels of trade.

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[1] Hoogovens Staal BV is currently named Corus Staal BV and Hoogovens Steel U.S.A., Inc. is currently named Corus Staal USA, Inc. Both the Netherlands steel producer and its U.S. affiliate are collectively referred to as "Hoogovens."

[2] *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 63 Fed. Reg. 3204 (March 18, 1998). The third administrative review covered one manufacturer/importer of the subject merchandise, Hoogovens Staal B.V., for the period of August 1, 1995, through July 31, 1996.

In light of the considerable uncertainty created by the *Final Results* and counsels' assumptions with respect to the evidentiary basis for Commerce's level of trade determination,[3] the *Final Results* were remanded to Commerce, *inter alia*, "for clarification of the evidentiary basis for Commerce's factual determinations concerning level of trade"; "[i]f Commerce's determination that Hoogovens' sales were made at two levels of trade was based on the evidence of record [rather than "facts available" pursuant to 19 U.S.C. § 1677e(a) and 1677m(d)], Commerce's remand results should so advise the court, with a summary of what evidence on the record Commerce relied on." *Hoogovens Staal BV*, 86 F. Supp. 2d at 1331.

In its *Remand Results*, at 3–4, after addressing the statutory requirements or prerequisite conditions for resorting to other facts available (not of record) pursuant to § 1677e(a)(1) or (2) and § 1677m(d), Commerce states in its *Remand Results*, at 4, that the "explanation of its [level-of-trade] determination [in the *Final Results*] was unclear and thus created confusion with respect to its reference to facts available. * * * For clarification, the Department's determination in this matter was based *solely upon information contained on the record of the proceeding.*" (Emphasis added.) *Id.* The foregoing statement establishes that the contentions of counsel for Commerce and the domestic industry that the level of trade determination was, in whole or in part, predicated on Commerce's resort to other facts available was simply counsels' *post hoc* attempt to create an adequate evidentiary basis in support of Commerce's determination.

As directed by the court, Commerce has provided in its *Remand Results* a summary of the evidence of record relied on for its level of trade determination with an explanation of its reasoning and conclusions on this issue. Commerce and the domestic industry now maintain that the level of trade determination should be sustained by the court solely on the basis of the evidence of record pursuant to 19 U.S.C. § 1516a(b)(1)(B). Hoogovens contends that there is no substantial evidence of record that its sales were made at two levels of trade during the period of review, and that Commerce erred in not sustaining its claim that all sales were made at one level of trade.

In its *Remand Results*, at 12–13, Commerce states its determination that Hoogovens' sales were made at two levels of trade is based on an examination of three factors: (1) the difference in the distribution system and channels of trade as between Hoogovens' service center and end-user customers; (2) the greater degree of the selling function of technical services performed by Hoogovens in its sales to end-users than in its sales to service centers; and (3) the pattern of consistent price differences charged by Hoogovens in its sales to service center and end-user customers.

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[3] From the briefs of counsel, it is apparent they were led to believe by the *Final Results* that Commerce had invoked, in whole or in part, "facts available" as evidentiary support for its level of trade determination.

Commerce states in the *Remand Results*, at 4–6, that "[d]ifferent levels of trade are characterized by purchasers at different places in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them"; and that different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in level of trade. Commerce found that Hoogovens' sales were made to two classes of customer in both the United States and home market: end-users and service centers. "Service centers" are intermediaries between the producer and end-users and perform the functions of maintaining inventories, further processing steel into special lengths and widths desired by the end-user, and distribution. Commerce found that sales to service centers and end-user customers are in different channels of trade, and the two categories of customer are at a different point in the distribution chain.

In its *Remand Results*, at 2, Commerce states "[t]he primary issue in dispute on level of trade in this case revolves around the performance of selling functions," *Remand Results*, at 6; and "[a]t issue in this case is whether sales to end-users and service centers in the United States and home markets were made at different levels of trade based upon, *inter alia*, the performance of varying levels of the selling function of technical services." Commerce acknowledges that "[t]he critical element in this case is *the degree* to which the selling functions are performed." *Remand Results*, at 7 (emphasis added).

Commerce regards the provision of technical service by Hoogovens as a critical selling function in the current review, based both on Hoogovens' claim in the previous review, and evidence on the record in the current review, which, according to Commerce, supports the continued importance to Hoogovens of providing technical service in selling its product to end-users. *Remand Results*, at 18. However, Hoogovens insisted to Commerce that its sales were made at the same level of trade since it provides essentially the same services to all customers in all markets, and it is unable to differentiate among the selling functions performed and services offered to different classes of home market and export price customers. *Remand Results*, at 2. Hoogovens further claims that during the period of review the quantitative aspect or degree to which the technical service selling function was performed varied only by customer, not customer category, and that there were no substantial differences in selling activities provided for the end-user and service center customers.

In rejecting Hoogovens' claim with respect to selling functions, Commerce cites Hoogovens' initial statement in the prior review that it provides "far greater sales assistance" to its end-user customers. *Remand Results* at 8, 10. Commerce also stressed that Hoogovens is in regular contact with its end-user customers' quality and product development specialists and frequently cooperates with its end-use customers in exploring ways to improve those customers' products; and that in the cur-

rent review, Hoogovens has stated that the service center customers frequently do not know the end-use of the product at the time of purchase of steel from Hoogovens. *Remand Results,* at 9. Finally, Commerce posits that although Hoogovens possesses an ability to isolate data on selling functions and determine on its own how such functions vary in kind and degree by customer category and end-use, Hoogovens did not provide such data to support its level of trade claim to the Department. *Remand Results,* at 8.

Hoogovens vigorously contends that Commerce cites no evidence demonstrating a substantial difference in the selling activities by Hoogovens with respect to its two categories of customer; and that Commerce did not consider the full range of selling activities performed by Hoogovens for its end-user and service center customers, or the similarities of the services performed in those activities, but instead focused attention on the single selling function of the provision of technical services.

The court first addresses Commerce's heavy reliance on Hoogovens' initial statement in the prior review that it provided far greater sales assistance to its end-user customers than to its service centers. Defendant argues that Hoogovens' current position is inconsistent with the statements initially made to Commerce in the Second Administrative Review. Hoogovens contends, however, that since Commerce relies on Hoogovens' statements made in the prior review, Commerce should not have then turned a blind eye to its own verification process in the prior review, in which, based on additional information Hoogovens had submitted to Commerce, the agency determined in its *Final Results* that the selling functions provided by Hoogovens to all customers, in both markets, were identical and its sales were made at one level of trade. Therefore, based on the verification process in the Second Review and overlapping sales in the second and third review periods,[4] Hoogovens maintains that its initial statements in the Second Administrative Review are not substantial evidence of the degree to which its selling activities were performed in the Third Review. The court is constrained to agree.

During the Second Review, notwithstanding Hoogovens initial statements, at verification Commerce accepted Hoogovens' explanation of its prior statements, and Commerce concluded that Hoogovens' sales were made at one level of trade in the *Final Results* of that review.[5] In

[4] Hoogovens emphasizes that in this case, the "window period" of home market sales examined in the prior review overlaps with the window period of home market sales in the current review. In the same vein, since the window period of home market sales for the *Final Results* at issue in this case also overlaps with the period of review for the Fourth Administrative Review. The court may take judicial notice that in the Fourth Review, *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 64 Fed. Reg. 11825, 11833 (March 10, 1999), Commerce again agreed with Hoogovens that all sales were made at one level of trade, which is consistent with the verification in the Second Review.

[5] In the *Final Results* of the Second Review, Commerce observed: "Initially, Hoogovens stated that there were multiple levels of trade and that it performed different selling functions for its end-user customers than for its service center customers. However, the LOT chart provided by respondent at verification indicated that the selling functions provided to all customers, in both markets, are identical. Hoogovens explained that after more in-depth examination, it was unable to distinguish among the selling functions provided to different categories of customers. *See Verification Report,* p. 10. Based upon the results of our verification, we find that there are no differences in LOT. *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 62 Fed. Reg. 18476, 18481 (April 15, 1997). Hoogovens' position in the Third Review is consistent with the verification process in the prior review.

the Third Review, Commerce also preliminarily accepted Hoogovens' position there was one level of trade for all of Hoogovens' sales. *See* 62 Fed. Reg. at 47421; *Hoogovens Staal BV*, 86 F. Supp. at 1327. Petitioners (domestic steel producers), however, objected to Commerce's preliminary determination in the current review, insisting that Commerce must hold Hoogovens' to its initial contradictory statements in the Second Review. *Id.* In the *Final Results* of the Third Review, based *inter alia* on Hoogovens' contradictory initial statements in the prior review, Commerce determined that Hoogovens had failed to sustain its burden of proof, "which is particularly appropriate here, where Hoogovens has reversed its position on the provision of the services in question." *Remand Results*, at 19.

While a determination in each administrative review must be based solely on the record before Commerce covering the particular period of review, in this case, apparently at the urging of the domestic producer plaintiffs, Commerce has revisited the record of the Second Review for inconsistent statements made by Hoogovens, but apparently ignored both Hoogovens' prior explanation of the inconsistency and indeed the verification process and final decision in the Second Review. In effect, in the current review Commerce has impeached its own verification process in the Second Review, and indeed its final level of trade determination. *See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 62 Fed. Reg. 18476, 18481 (April 15, 1997). By considering evidence of record in the prior review called to Commerce's attention by the domestic producers, the door was opened for Commerce to also consider Hoogovens' explanation and the verification process in the Second Review relating to the level of trade determination in the *Final Results* of the prior review. Under the circumstances, where Commerce failed to consider its own verification process in the Second Review, plainly it would be anomalous for the court to now accord Hoogovens' initial statements in the Second Review the status of "substantial evidence on the record" in the current review.

Hoogovens also strenuously objects to Commerce's conclusion there were substantial differences between the provision of technical services to end users (like automotive end-users) and service center customers, with a greater degree of such services performed for end-user customers based solely on the description of certain services provided to an end user customer in Hoogovens' brochure. *Remand Results*, at 20–22. The brochure relied on by Commerce is not substantial evidence that there were *substantial differences* in the technical services performed for end user and service center customers.

Further, the court does not find the fact that an important home market service center customer of Hoogovens itself performed technical services for its end-user customers is substantial evidence that Hoogovens provided no technical services to its service center customer.

The court turns to Hoogovens' argument that Commerce's reliance on the existence of a pattern of consistent price differences in sales to end-users and service centers, *see Remand Results,* at 12, is contrary to law. Specifically, Hoogovens maintains that pursuant to the provisions of 19 U.S.C. § 1677b(a)(7)(A)(ii), a pattern of consistent price differences is not a relevant factor in determining whether there are different levels of trade, but rather price differences are to be used only as a factor in determining whether a difference in level of trade has an effect on price comparability, and thus the amount of adjustment. Thus, according to Hoogovens, it is only *after* two levels of trade have already been established by relevant evidence that Commerce considers whether a pattern of consistent price differences demonstrates that a difference in level of trade affects price comparability. The court concludes that under the circumstances of this case, the pattern of consistent price differences is not substantial evidence of two levels of trade.

Commerce acknowledges in its *Remand Results,* at 5 and 12, that in determining whether sales were made at different levels of trade, "[n]ormally, the Department only considers the distribution system *(e.g.,* the designation of a customer as a service center or end-user) and the selling functions performed in making its determination of whether sales are made at different levels of trade"; "[a] finding of a pattern of consistent price differences * * * normally provides the basis for calculating the amount of the level-of-trade adjustment." *Remand Results,* at 12–13 (emphasis added).

In its *Remand Results,* at 12, Commerce concludes from Hoogovens' statement that the primary factor governing prices charged to end-users and service centers is the "historic commercial reasons related to the relative functions *of* service centers and end users," citing Hoogovens' January 24, 1997 Response at 13, that "in this case a continued pattern of price differences between end-users and service centers is indicative of a continuation in the historic functions provided *to* service centers and end-users." (Emphasis added.) Hoogovens contends that Commerce drew an erroneous conclusion from its statement referring to the functions *of service centers and end-users* and not the functions provided *to* its customers. Commerce explains that Hoogovens' statement "directly links the differences in prices that Hoogovens charges to these customer categories to their position in the chain of distribution and the functions performed, and is therefore also reflective of the functions that Hoogovens must perform for end-users and service centers." *Remand Results,* at 24. Even allowing liberally for an agency's prerogative to make reasonable inferences from the facts of record, *Radio Officers' Union v. NLRB,* 347 U.S. 17, 50 (1954), Hoogovens' statement is not substantial evidence of the degree of difference of Hoogovens' technical services provided to its two categories of customer.

In reviewing Commerce's *Remand Results,* the court will sustain Commerce's level of trade determination unless it is "unsupported by substantial evidence or otherwise not in accordance with law." *See Thai*

Pineapple Public Co., Ltd. v. United States, 187 F. 3d 1362, 1365 (Fed. Cir. 1999) (citing *Micron Technology, Inc. v. United States,* 117 F. 3d 1386, 1393 (Fed. Cir. 1997)(quoting 19 U.S.C. § 1516a(b)(1)(B)(i))). "Substantial evidence is more than a mere scintilla and [it is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, taking into account the entire record, including whatever fairly detracts from the substantiality of the evidence." *Atlantic Sugar, Ltd. v. United States,* 744 F.2d 1556, 1562 (Fed. Cir. 1984).

The court observes at this juncture that in reviewing agency determinations, the court declines to reweigh or reinterpret the evidence of record. *See Consolo v. Federal Maritime Comm'n,* 383 U.S. 607, 620 (1966). Moreover, it is not the province of this court to review the record evidence to determine whether a different conclusion could be reached, but to determine whether Commerce's determination is supported by substantial evidence. *Inland Steel Industries, Inc. v. United States,* 188 F.3d 1349, 1359 (Fed. Cir.1999) (citing *P.P.G. Indus., Inc. v. United States,* 978 F.2d 1232, 1236 (Fed. Cir.1992)). *See also Consolo,* 383 U.S. at 620 ("[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.").

Observing the foregoing principles, the court nonetheless concludes that Commerce's finding that Hoogovens' sales were made at two levels of trade is unsupported by substantial evidence. Indeed, substantial evidence is lacking with respect to the very factor that Commerce itself views as critical in this case to a proper determination that there were two different levels trade—the difference in the degree of technical services performed by Hoogovens for its two categories of customer.

Significantly, in the *Final Results* Commerce asserted that Hoogovens' failure to provide detailed level of trade information left Commerce "with an inadequate record on this issue" (including the degree to which Hoogovens' technical and quality assurance assistance was performed), and that Hoogovens had failed to provide "the information necessary for the Department to make a proper evaluation of LOT * * *." *See Final Results,* 63 Fed. Reg. at 13206–08.

In the *Final Results,* Commerce acknowledged that it is the agency's responsibility, not that of a respondent, to determine what levels of trade exist, and no presumption is made with respect to level of trade. *See Remand Results,* at 2, 6. Continuing to express its own misgivings as to the sufficiency of data with respect to the performance of technical services "the critical element in this case," *Remand Results,* at 7, 19, Commerce nonetheless contends its determination there were two levels of trade is supported by substantial evidence on the record. *Remand Results,* at 4.[6] For the reasons stated above, the court is unable to agree.

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[6] In *Hoogovens Staal BV,* 86 F. Supp. at 1330, the court observes: "Commerce seemingly waffles between finding the record inadequate on the issue of selling functions and the lack of necessary information of record for a proper evaluation of level of trade, and also finding *from the evidence of record* that Hoogovens' sales were made at two different levels of trade."

II.

Warranty and Technical Service Expenses

On remand, the domestic producers continue to insist that Hoogovens failed to segregate home market warranty and technical service expenses into direct and indirect expenses, and such failure to segregate is fatal to any adjustment by Commerce for warranty and technical service expenses in the home market. While Hoogovens asserted to Commerce in the review that it had incurred no direct warranty or technical service expenses in either the U.S. or home market, Section B response, pages B–37, B–39; Section C response, pages C–32, C–33 (November 18, 1996), worksheet information was reported by Hoogovens (Exhibits B–9 and C–6). The latter shows a breakdown of the warranty and technical service expenses included in the reported "indirect" selling expenses so that Commerce could determine that those expenses were related to specific sales, as opposed to indirect selling expenses, such as the salaries and administrative overhead of the Quality Assurance Department. *Remand Results,* at 14.

In its *Remand Results,* Commerce itself found it was necessary to reverse its position from its initial draft redetermination, and not surprisingly, the domestic producers now seek to hold Commerce to its initial statements and position that the expenses in question are not direct expenses in the home market, and that no adjustment for the expenses may be made in the home market for normal value. Hoogovens and defendant maintain that there was no error with Commerce's treatment of home market warranty and technical service expenses in the *Remand Results.*

Domestic producers claim that in the final *Remand Results,* Commerce provided no "reasoned explanation" for its reversal of position in the *Draft Remand Results,* cited no evidence supporting its determination that the expenses in question were direct, and Commerce came to inconsistent conclusions based on the same evidence of record without explanation. The contentions are patently without merit.

In the *Remand Results,* at 13–15 and 24–25, Commerce's rationale for treating the expenses in question as direct and not denying an adjustment may be adequately discerned by reading together the split discussion in the *Remand Results* of warranty and technical service expenses. The rationale is essentially an adoption of Hoogovens' position. It is sufficient if the agency's explanation allows "the reviewing court [to] discern the path of reasoning which led to the final outcome." *Asociacion Columbiana de Exportadores de Flores v. United States,* 704 F. Supp. 1068, 1071 (1988). *See also Wheatland Tube Co. v. United States,* 161 F.3d 1365, 1369–70 (Fed. Cir. 1998).

In *Torrington Co. v. United States,* 82 F.3d 1039 (Fed. Cir. 1996), one of the issues revolved around whether certain aggregated post-sale price adjustments were deductible from foreign value as indirect selling expenses under the ESP offset regulation. The Federal Circuit held that irrespective of the foreign manufacturer's *aggregation of expenses* for

bookkeeping purposes (*i.e.*, for bookkeeping purposes, the expenses were allocated neither on a product-specific nor customer-specific basis), since the expenses were *calculated* by the manufacturer on a product-specific basis, and *because of the product-specific and particular sales related nature of the expenses, Commerce was required to treat the expenses in question as direct* rather than indirect under the ESP offset regulation. The Federal Circuit reasoned that "the allocation of expenses [by the foreign manufacturer] in a manner different from the calculation of the expenses, however, does not alter the relationship between the expenses and the sales under consideration" and Commerce erred in treating as indirect expenses those expenses that were shown to be direct. Hence, *Torrington* does not support the position of the domestic producers in this case.

The court fully agrees with Commerce that domestic producers' reliance on *RHP Bearings v. United States*, 875 F. Supp. 854 (CIT 1995) is also misplaced. In *RHP*, the foreign producer, which had incurred technical service expenses in the United Kingdom and abroad in assisting customers with bearing problems reported all of its technical service expenses to Commerce as indirect expenses, had no records which would allow it to tie its technical service expenses directly to particular products, sales, customers or markets, and significantly, the producer refused to segregate its direct and indirect expenses as requested by Commerce. Under these circumstances, the court upheld Commerce's resort to best information available and its treatment of all technical service expenses in the U.S. market as direct selling expenses for purposes of U.S. price and all technical service expenses in the home market as indirect expenses for purposes of foreign market value. *Id.* at 858–59. The facts of the current case are quite distinguishable from those in *RHP*.

While the domestic producers contend that Commerce's analysis of the data submitted by Hoogovens is flawed and Commerce should have come to the conclusion urged by the domestic producers, Commerce has particular expertise in the analysis and verification of information, and the court can see no reason why it should substitute its judgment for that of the agency, which analyzed the data and concluded that it showed variable warranty and technical service expenses directly related to certain sales. *Cf. NSK Ltd. v. United States*, 190 F.3d 1321, 1331 (Fed. Cir. 1999) ("because the statute provides no specific guidelines for the treatment of warranty expenses, Commerce's interpretation of the statute with respect to circumstances of sale adjustments for warranty expenses cannot be disturbed if reasonable," *quoting Zenith Elec. Co. v. United States*, 988 F.2d 1573, 1584 (Fed. Cir. 1993)).

CONCLUSION

For the reasons stated above, the *Remand Results* are sustained with respect to the adjustment of normal value for home market direct expenses of warranty and technical services. Regarding Commerce's level of trade determination, the *Remand Results* are remanded for further action deemed appropriate by Commerce consistent with this opinion.

(Slip Op. 01–43)

MITCHELL FOOD PRODUCTS, INC. FORMERLY SOUTHERN GOLD CITRUS PRODUCTS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 94–05–00296

[Upon trial of plaintiff's demand for return of drawback duties, judgment for the defendant.]

(Decided April 12, 2001)

Donald F. Beach, Esq. for the plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General; *David M. Cohen,* Director, and *Velta A. Melnbrencis,* Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Cynthia B. Schultz* and *Matthew D. Lee);* and Assistant Chief Counsel, International Trade Litigation, U.S. Customs Service *(Karen P. Binder),* of counsel, for the defendant.

OPINION

AQUILINO, *Judge:* The drawback of duties on imports has been an element of federal governance of America since its inception[1], but the grant thereof has long been held to be a privilege, not a right, with doubt in regard thereto to be resolved in favor of the government. *E.g., Swan & Finch Co. v. United States,* 190 U.S. 143, 146 (1903); *Nestle's Food Co. v. United States,* 16 Ct.Cust.Appls. 451, 455, T.D. 43199 (1929), and cases cited therein. Moreover, the national Constitution, from the beginning, has required an actual stake in a case or controversy asserted under Article III, with the Supreme Court noting that it sometimes remains to be seen whether the factual allegations of a complaint necessary for standing will be supported adequately by the evidence adduced at trial. *Gladstone, Realtors v. Village of Bellwood,* 441 U.S. 91, 115 n. 31 (1979).

I

The trial of plaintiff's complaint herein has left doubt, both as to standing to actually recover and with regard to the merits of the claim for recovery.

A

Mitchell Food Products, Inc. is introduced by the complaint (at pages 2–3) as the putative plaintiff in the following manner:

> Southern Gold Citrus Products, Inc. (SG * * *) was purchased in 1982 by the Seven-Up Company, a wholly owned subsidiary of Phil-

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[1] *See* Act of July 4, 1789, § 3, 1 Stat. 24, 26–27.

> ip Morris, Inc. Later, when Seven-Up was sold by Philip Morris in 1986, its stock and assets were assigned to Packaged Food & Beverage Company, Inc. (PFB), a wholly owned corporate subsidiary of Philip Morris, Inc. SG continued operations until an unseasonable and severe frost forced it to cease production. After cessation of operations, SG filed drawback claims * * * to cover exportations which occurred prior to the permanent stoppage of production.
>
> Although ceasing operations, SG retained its corporate charter pending payment of drawback and until the Customs Service had completed Operation "Orange Squeeze." SG's affairs were and are being administered by PFB of Clayton, Missouri 63105.
>
> Early in 1993, SG was asked to relinquish its tradename as another [] Philip Morris corporate subsidiary wished its use. SG through PFB did not object to its name transfer, and it was assigned the designation of Mitchell Food Products, Inc. * * *
>
> * * * [P]laintiff will be referred to as Southern Gold Citrus Products, Inc. or the abbreviated "SG" until this action is concluded, except for the formal, official case designation in the heading of papers submitted to this Court. The name "Mitchell Food Products, Inc." does not appear on any paper or document relevant to this action, except for the attached exhibit, to the best knowledge and belief of the plaintiff and its attorney.

The exhibit referred to, labelled "A" to the complaint, is simply counsel's notification of Customs of the purported change of name of Southern Gold Citrus Products, Inc. to Mitchell Food Products, Inc.

In their answer on behalf of the defendant, government counsel deny the foregoing material averments "for lack of information" and thus knowing whether either of the encaptioned entities is a proper party plaintiff herein. Issue having been so joined by the pleadings, and not having been resolved before trial[2], the burden was then on the plaintiff to adduce evidence to substantiate standing to recover on the complaint. No attempt to do so was made, which failure necessarily invokes the admonition of the Supreme Court that the

> requirements of Art. III are not satisfied merely because a party requests a court of the United States to declare its legal rights, and has couched that request for forms of relief historically associated with courts of law in terms that have a familiar ring to those trained in the legal process.

Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982).

B

Of course, this court was not at liberty to guide counsel in the prosecution of plaintiff's action. Hence, corporate standing was still an open question when the parties determined to rest at the trial, which focused on the demand for return of $828,186.97 in drawback duties and $90,324.19 in interest. Those amounts had been repaid to Customs fol-

[2] *Cf.* defendant's first proposed pretrial order, Schedules B, F-2.

lowing an audit by the Service of a contract with Southern Gold Citrus Products, Inc., which the court will refer to hereinafter as "SGCP", for accelerated payment by the government of substitution manufacturing drawback based upon 19 U.S.C. § 1313(b) and (i) and 19 C.F.R. Part 22 (1983). That part of the Tariff Act of 1930, as amended, provided:

> **(b) Substitution for drawback purposes**
>
> If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported; but the total amount of drawback allowed upon the exportation of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.
>
> * * * * * * *
>
> **(i) Time limitation on exportation**
>
> No drawback shall be allowed under the provisions of this section unless the completed article is exported within five years after importation of the imported merchandise.

The contract, a synopsis of which was duly reported at T.D. 84–2(V) (1983), 18 Cust.Bull. & Dec. 7, 12[3], was based upon a lengthy written undertaking by SGCP, copies of which were introduced at trial. The exported products for which drawback was authorized by Customs were specified to be (1) orange juice from concentrate (reconstituted juice), (2) frozen concentrated orange juice, (3) bulk concentrated orange juice, and (4) drink base containing orange solids, all derived from concentrated orange juice for manufacturing. That basic substance, either imported, or duty-paid, duty-free or domestic, was specified to be as defined in the U.S. Food & Drug Administration standard of identity, 21 C.F.R. § 146.153, of not less than 55° Brix[4], and to meet the Grade A standard of the U.S. Department of Agriculture, 7 C.F.R. § 2852.2221–2231. *See* Plaintiff's Exhibit 1 and Defendant's Exhibit E, Attach. 2, third page. Among other things, the SGCP undertaking. de-

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[3] *Cf.* T.D. 85–110, 19 Cust.Bull. & Dec. 255 (1985), superseding T.D. 80–227(A), 14 Cust.Bull. & Dec. 533, 534–36 (1980).

[4] According to Webster's Third New International Dictionary of the English Language Unabridged 279 (1981), this is "a hydrometer scale for sugar solutions so graduated that its readings in degrees Brix at a specified temperature represent percentages by weight of sugar in the solution". The proper noun is that of its inventor, Adolf F. Brix.

scribed its contemplated production of the four articles. It also made the following commitments:

Procedures and Records Maintained

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;
2. The quantity of merchandise of the same kind and quality as the designated merchandise we used to produce the exported article;
3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3 year period, we produced the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Inventory Procedures

Our inventory procedures described below will provide all of the information necessary to satisfy the legal requirements included in the above heading of "Procedures and Records Maintained".

Receipt and Storage of Designated Merchandise

The containers of imported frozen concentrated orange juice or concentrated orange juice for manufacturing are stored separately upon receipt. Our receiving records will show:

1. Date of receipt
2. From whom received
3. Quantity received
4. Quality received (degree Brix)
5. Container numbers
6. Import entry number and date of entry
7. When imported and domestic materials are comingled *[sic]* in storage prior to use, our accounting method will be on a first-in-first-out basis.

Production of Exported Articles

Our production records will reflect the following information:

1. What was produced and date or period of production.
2. What was used to produce the exported article. Our records will indicate the kind and quality of the material used to produce the exported article.

Use of Designated Article

Our records will reflect the date we used the designated merchandise to produce articles.

Shipping Records

Our shipping records will indicate the date the exported product was shipped, to whom, the name of the exporting carrier, and the quantity and identity of all products shipped.

Basis of Claim For Drawback

Our claim for drawback will be based on the quantity of concentrated orange juice for manufacturing used to produce the exported articles.

Agreements

The corporation specifically agrees that it will:

1. Comply fully with the terms of this statement when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized government officers;
3. Keep its drawback-related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this statement;
4. Keep this statement current by reporting promptly to the Regional Commissioner who liquidates its claims any changes in the number of locations of its offices or factories, the corporate name, or the corporate organization by secession or reincorporation;
5. Keep this statement current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this statement;
6. Keep a copy of this statement o[n] file for ready reference by employees and require all officials and employees concerned to familiarize th[e]mselves with the provisions of this statement; and
7. Issue instructions to insure proper compliance with Title 19, United States Code, Section 1313 (a) & (b), Part 22 of the Customs Regulations and this statement.

Id., fifth to seventh pages. Pursuant to this agreement, SGCP applied for and received drawback on numerous shipments, including those at issue herein, which are described on Customs Forms 7575–B, Drawback Entry Nos. 84–410909, 85–509909, 85–521807 and 85–521808. *See* Defendant's Exhibits A, B, C, D.

Subsequent to accelerated payments thereon, Customs undertook to audit those shipments, by which time the Service had revised its regulations which govern drawback per part 191 of 19 C.F.R. *See* T.D. 83–212, 17 Cust.Bull. & Dec. 465 (1983). Each of the resultant audit reports recommended recovery from SGCP of the drawback paid on the aforenumbered entries. *See generally* Defendant's Exhibits E, F, G, H. The recommendation(s) were based upon the following negative conclusions:

1. The 1984 production records were not available. As a result, we could not determine the manufacturing time frame of the designated imports, use in production, quantity and quality of the substituted materials, CR 191.32(a)(1)(2)(4).

> 2. The records tracing the transfer of the designated import from the receiving department to the production department were not available. Southern Gold used internally designated drums for the production of the exported products. The drum numbers indicated on the production records were different from the drum numbers identified in the receiving records. Compliance with Section 191.32(a)(1)(3) of Customs Regulations was not met.
>
> * * * * * * *
>
> 4. The manufacturing time frame of the designated import could not be determined because the production records were not available. Compliance with Section 191.32(a)(3) of the Customs Regulations could not be established.

Defendant's Exhibits G, H, seventh, eighth pages. *See* Defendant's Exhibit F, eighth page. In addition to the first two conclusions, which were the same for entry No. 84–410909, the report of its audit concluded:

> 3. The total single strength gallons of orange juice concentrate for manufacturing used to produce orange drink base, super succo orange and citrus punch drink was overstated by 10,614.87 single strength gallons and overstated the duty refund by $3,715.19. The overstatement was due to the mixture of orange wash pulp in the exported products.

Defendant's Exhibit E, eighth page. Thus, with the exception of this one substantive negative conclusion, the audit recommendation(s) were based on lack of the proof required by the SGCP agreement, *supra*, and the governing Customs regulations.

Some three and a half years later, company counsel undertook to locate the records claimed to support the contested drawback. *See, e.g.*, Defendant's Exhibits I, J. That effort proved only minimally successful, with the Service's "follow-up verification" affirming denial of drawback, save $17,598 on entry No. 84–410909. Defendant's Exhibit L. According to plaintiff's summons herein, the SGCP entries were finally liquidated in accordance with the audit recommendation(s), modified as indicated with regard to that particular entry. The protest thereof duly filed with Customs was denied "because of certain missing records", and this action commenced pursuant to 28 U.S.C. § 1581(a).

(1)

The trial herein afforded the plaintiff another opportunity to establish its entitlement to drawback on the entries in question. It relies on *Aurea Jewelry Creations, Inc. v. United States*, 13 CIT 712, 720 F.Supp. 189 (1989), *aff'd*, 932 F.2d 943 (Fed.Cir. 1991), to the effect that testimonial evidence can supplant missing documentation in an action such as this. That case involved a claim for drawback under 19 U.S.C. § 1313(a) on imported gold chain and bracelets which were melted into gold ingots by JMS Manufacturing Co., a wholly owned subsidiary of Aurea, and were then exported. Customs rejected the drawback claim "on the ground that Aurea failed to maintain records". 13 CIT at 713, 720 F.Supp. at 190. At trial, Aurea explained that the records were lost when

JMS went out of business, whereupon it called the company's former plant manager and former controller to testify with regard to the maintenance of those records, as well as their specific contents. The court accepted their testimony as "dispel[ling] Customs' underlying doubts in denying drawback"[5] and thereby held that the plaintiff had made a valid claim for drawback. The court of appeals affirmed, noting that a

> claimant's testimonial evidence thus could be used to satisfy a two-pronged inquiry—1) whether appropriate documentation was maintained as required; and 2) whether the contents of that documentation adequately established claimant's right to the drawback.

Aurea Jewelry Creations, Inc. v. United States, 932 F.2d 943, 946 (Fed.Cir. 1991).

The plaintiff in the action at bar presents little conclusive evidence. Customs denied drawback after audit because the inventory and production records, required to show the transfer of imports from one department to the other, were unavailable. In lieu thereof, the plaintiff called one witness to the stand, Rosaria M. Wills, former controller of SGCP, who was competent to testify regarding the required recordation[6], but who was, at best, tangentially familiar with the production process[7], *e.g.*:

> Q When you were preparing a drawback claim, what did you first do?
>
> A I would * * * receive a bill of lading from the warehouse, telling me that [a] shipment was going overseas. And then, [I] would receive a seventy-five-eleven, which is a blue form, notice of exportation. Then, I would get a copy of the invoice, and * * * the manifest * * * show[ing] the drums that left with that shipment.
>
> * * * * * * *
>
> And, [I] would combine all this information together, as far as the manifest, the bill of lading, notice of exportation, and the vessel. []
>
> * * * * * * *
>
> Then, I would match up all this information * * * and make up all the forms. Then, * * * with * * * the president of the company, [who] had been a production manager,[] we w[ould] go to the drums from the manifest, to see—and he would go to his other score sheet, which was different. * * *
>
> * * * * * * *
>
> * * * I would check against the score sheet to see if those drums were the ones produced. But we went another step further, and went back and check[ed] each drum, to be sure that it fit the requirement of the U.S. Customs, as far as [] full drawback * * *.

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[5] *Aurea Jewelry Creations, Inc. v. United States*, 13 CIT 712, 715, 720 F.Supp. 189, 192 (1989), *aff'd*, 932 F.2d 943 (Fed.Cir. 1991).

[6] *See, e.g.*, trial transcript ("Tr."), pp. 50, 67–75, 77–88, 90–124, 133–34.

[7] *See, e.g.*, id. at 36–39.

Tr. at 83–85. In other words per the record, the witness was "not in production"[8] and thus did not have direct knowledge of the makeup of the product. In fact, all of the drawback claims were filled out with the assistance of the president and former production manager of SGCP.[9] Hence, the court cannot, and therefore does not, find that Mrs. Wills was sufficiently familiar with production or otherwise satisfied the second prong of *Aurea Jewelry,* 932 F.2d at 946, *supra.*

(2)

On its part, the defendant adduced evidence at trial which engenders doubt as to whether the exported goods conformed with SGCP's drawback contract. That contract committed the exported bulk concentrated orange juice to "a minimum USDA Grade A score of 94"[10], but that grade apparently was not always achieved. For example, ungraded navel oranges were used in the manufacture of product on occasion: On September 14, 1983, 36 drums of such oranges were sent to the plant. *See* Defendant's Exhibit T24, pp. 1, 2; Tr. at 149–51. Drink base produced on that date was shipped out on the 28th of that same month. *See* Defendant's Exhibit A, p. 4; Tr. at 149–51. On December 21, 1983, one bin of navels went to the plant, additional drums were sent three days later, and on December 28th 48 drums were delivered. *See* Defendant's Exhibit T4, p. 1; Tr. at 140–43. Product from those dates was included in a drawback claim in which 23,022 gallons were cleared on December 30, 1983. *See* Defendant's Exhibit A, p. 3; Tr. at 140–43. Navel oranges were delivered to the plant for processing on January 4, 1984. *See* Defendant's Exhibit T9, p. 1; Tr. at 145–47. Some 18,590 gallons of product processed on that day cleared Customs three days later. *See* Defendant's Exhibit A, p. 3; Tr. at 145–47. Twenty four drums of navels were delivered to the plant on February 28, 1984. *See* Defendant's Exhibit T21, pp. 1, 4; Tr. at 148–49.

The drawback contract also required the use of essential oils and flavoring components in the manufacture of bulk concentrated orange juice. *See* Defendant's Exhibit E, Attach. 2, p. 4; Tr. at 164–65. On at least three occasions, the record reflects that such required additives were left out of the manufacturing process. On October 27, 1983, neither essence nor oil was transferred to production, and the natural aroma was returned to stock. *See* Defendant's Exhibit T1, p. 1; Tr. at 167–68. Product created on that date was shipped on the *Great West* and *Alliance V–156* on the 28th and 30th of October, respectively. *See* Defendant's Exhibit A, p. 3. On December 26, 1983, again no oils or essences were transferred to the plant, the product of which was exported on the *Aime Enterprise* that same month. *See* Defendant's Exhibit T7, pp. 1, 2 and Exhibit A, p. 3; Tr. at 169–70. No oils or essences were transferred to the plant for production on February 24, 1984. *See* Defendant's Exhibit

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[8] *Id.* at 157.

[9] *See id.* at 157–58, 160–61.

[10] Defendant's Exhibit E, Attach. 2, fourth page.

T5, p. 1; Tr. at 168–69. The product manufactured that day was exported on the *Pacer V–84* and the *Lindsey Transport* on February 27th and on March 5th, respectively. *See* Defendant's Exhibit A, p. 3.

Given such shortcomings, the court finds that Customs was on sustainable ground after audit in denying SGCP drawback. *Cf.* 19 C.F.R. § 191.23(d) (1987).

II

In sum, the burden of proving that either Mitchell Food Products, Inc. or Southern Gold Citrus Products, Inc. is entitled to the return of the drawback duties ceded to the U.S. Customs Service after audit has not been met. Judgment will enter accordingly.

(Slip Op. 01–44)

TRANSCOM, INC., PLAINTIFF, AND L & S BEARING CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND TIMKEN CO., DEFENDANT-INTERVENOR

Court No. 97–02–00249

(Dated April 17, 2001)

JUDGMENT

TSOUCALAS, *Senior Judge:* This Court having received and reviewed the United States Department of Commerce, International Trade Administration's ("Commerce") Final Results of Redetermination Pursuant to Court Remand, *Transcom Inc., L & S Bearing Company v. United States,* 24 CIT ____, 123 F. Supp. 2d 1372 (2000) ("Remand Results"), and Commerce having complied with the Court's remand and no responses to the Remand Results having been submitted by the parties, it is hereby

ORDERED that the Remand Results filed by Commerce on February 23, 2001, are affirmed in their entirety; and it is further

ORDERED that since all other issues have been decided, this case is dismissed.

(Slip Op. 01–45)

ROSES INC., THE FLORAL TRADE COUNCIL AND THE CALIFORNIA FLORAL TRADE COUNCIL, PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 87–01–00045

(Dated April 17, 2001)

JUDGMENT

WATSON, *Senior Judge:* In this case, issue was joined on April 10, 1987. No action has been taken by plaintiff to prosecute this case since June 9, 1987, on which date the plaintiff stipulated with defendants for access to confidential documents filed as part of the administrative record. Accordingly, this action is dismissed for lack of prosecution.

(Slip Op. 01–46)

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 87–07–00778

(Dated April 17, 2001)

JUDGMENT

WATSON, *Senior Judge:* In this case, issue was joined on October 19, 1987. No action has been taken by plaintiff to prosecute this case since December 1, 1987, on which date the plaintiff stipulated with defendant to a protective order. Accordingly, this action is dismissed for lack of prosecution.

(Slip Op. 01–47)

SANYO ELECTRIC CO., LTD, AND SANYO ELECTRIC INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 88–03–00216

(Dated April 17, 2001)

JUDGMENT

WASTON, *Senior Judge:* In this case, issue was joined on November 3, 1988. No action has been taken by plaintiff to prosecute this case since August 15, 1989, on which date the plaintiff's attorneys filed Notice of Change of Address. Accordingly, this action is dismissed for lack of prosecution.

(Slip Op. 01–48)

FORMER EMPLOYEES OF CNG DEVELOPMENT CO., PLAINTIFFS *v.* U.S. SECRETARY OF LABOR, DEFENDANT

Court No. 90–12–00655

(Dated April 17, 2001)

JUDGMENT

WATSON, *Senior Judge:* This court having received and reviewed the United States Department of Labor's "Notice of Negative Determination on Reconsideration" dated July 8, 1991, pursuant to the court's remand of May 9, 1991, on defendant's consent, in order that the Department conduct a further investigation regarding plaintiffs' application for certification for Trade Adjustment Assistance, and Department of Labor having complied with the court's remand order on July 10, 1991, and the plaintiffs having requested a briefing schedule by letter dated September 9, 1991, and the court having granted plaintiffs sixty days in which to file a brief indicating their objections, if any, to the Department's Negative Determination on Reconsideration on July 23, 1998, and no briefing of the remand results having been submitted by the parties, it is hereby

ORDERED that the Notice of Negative Determination on Reconsideration is affirmed in its entirety; and it is further

ORDERED that since all other issues have been decided, this case is dismissed.

(Slip Op. 01–49)

MITSUBISHI ELECTRIC CORP. AND MITSUBISHI ELECTRIC SALES AMERICA, INC., PLAINTIFFS *v.* UNITED STATES, DEFENDANT.

Court No. 85–07–00928

(Dated April 17, 2001)

JUDGMENT

WATSON, *Senior Judge:* In this case, issue was joined on September 19, 1985. No action has been taken by plaintiff to prosecute this case since that date. Accordingly, this action is dismissed for lack of prosecution.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C01/15 3/8/01 Restani, J.	Safco Prods.	99–3–00160	7326.90.8585 4%	8302.50.00 1.4%	Agreed statement of facts	Seattle Base metal racks & clamps for storage & filing
C01/16 3/8/01 Restani, J.	Tiger Electronics, Inc.	97–11–02009	8543.89.90 3.4% or 3.1%	8470.10.00 2.9% or 2.6%	Agreed statement of facts	Seattle Pocket-size electronic organizers
C01/17 3/12/01 Goldberg. J.	Keilen Ltd.	00–5–00224, 00–12–00565	6912.00.48 10.5%	6912.00.10 0.8% or 0.7%	Agreed statement of facts	Los Angeles Coarse-grained earthenware
C/01/18 3/13/01 Wallach, J.	New Holland North America, Inc.	94–2–00132	8429.51.10 2.0% or 1.6–2.0%	Parties agree that the reliquidation of merchandise identified as models 455D, 555D, 655D, 575D and 675D will result in a refund of 21% of the total duties on the stipulable merchandise	Agreed statement of facts	Houston, Seattle, Baltimore, etc. Models 455D, 555D, 655D, 575D and 675D
C01/19 3/28/01 Barzilay, J.	Automatic Plastic Molding, Inc.	98–7–02539	7020.00.60 5.6%	7010.91.50 Free of duty	Agreed statement of facts	Not stated 6-litter glass bottle identified on the invoices as "Style # 053790-Bord Francese
C01/20 4/3/01 Eaton, J.	Blondin, Inc.	98–6–02435	8704.22.50 8.4%, or 25%	8701.90.10 For tractor portion 8716.20.00 For bogie wagon	Agreed statement of facts	Philadelphia Two or four-wheeled tractor and attached bogie wagon

C01/21 4/5/01 Goldberg, J.	Dart Garment Ind.	01–00094	6107.21.00 Not stated	6207.21.00 Not stated	Agreed statement of facts	New York "Men's 100% Cotton Pyjamas Set"
C01/22 4/6/01 Restani, J.	Mita Copystar Inc.	00–00271	3707.90.30 or 3707.90.32 Various rates	9009.90.00 or 9009.90.50 or 9009.90.80 Various rates	Agreed statement of facts	Atlanta, El Paso, Chicago, New York Photocopier toner cartridges
C01/23 4/13/01 Watson, J.	Ero Industries, Inc.	96–10–02374	3926.90.98 5.3%	9503.90.00 Free of duty	Ero Industries, Inc. *v.* United States, Slip Op. 00–138 (2000)	San Juan Playtents, etc.
C01/24 4/13/01 Watson, J.	Ero Industries, Inc.	97–12–02143, 97–12–02144	3926.90.98 5.3%	9503.90.00 Free of duty	Ero Industries, Inc. *v.* United States, Slip Op. 00–138 (2000)	Los Angeles Playtents, etc.
C01/25 4/13/01 Watson, J.	Ero Industries, Inc.	97–12–02145, 97–12–02146	3926.90.98 5.3%	9503.90.00 Free of duty	Ero Industries, Inc. *v.* United States, Slip Op. 00–138 (2000)	Los Angeles Playtents, etc.
C01/26 4/17/01 Pogue, J.	Umbra USA Inc.	99–10–00643	4421.90.40 6.3% or 5.7% 4414.00.00 4.7%	9403.60.80 1% or 0.5%	Agreed statement of facts	Buffalo Floor screens or wooden photo frames
C01/27 4/18/01 Restani, J.	Ero Industries, Inc.	99–12–00742	3924.90.55 3.4%	9503.90.00 Free of duty	Ero Industries, Inc. *v.* United States, Slip Op. 00–138 (2000)	Los Angeles Playtents, etc.

ABSTRACTED VALUATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V01/2 4/10/01 Restani, J.	Altiva Imports, Inc.	98–1–00035	Section 1401a(f)	Dutiable value of $11,762 or $11,532	Agreed statement of facts	New York Wearing apparel
V01/3 4/10/01 Restani, J.	Teamwork Int'l, Inc.	98–1–00036	Section 1401a(f)	Dutiable value of $20,226 or $6,083	Agreed statement of facts	New York Wearing apparel

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